TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 180.

THE FARMERS' LOAN AND TRUST COMPANY, TRUSTEE, PETITIONER,

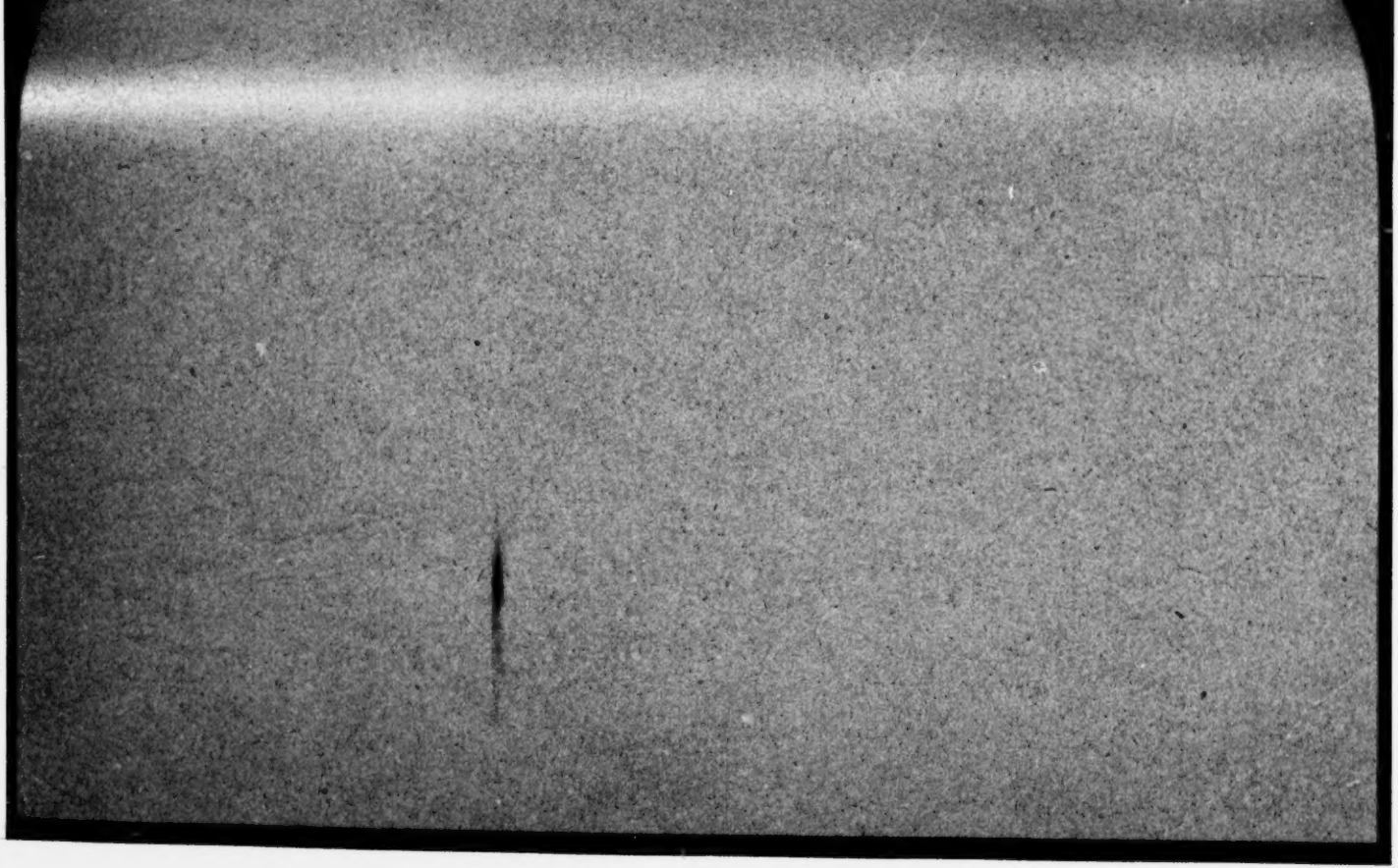
vs.

THE PENN PLATE GLASS COMPANY AND WILLIAM L. KANN.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

PETITION FOR CERTIORARI FILED OCTOBER 24, 1900.
CERTIORARI AND RETURN FILED NOVEMBER 28, 1900.

(17,942.)



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IN THE

United States Circuit Court of Appeals,

THIRD CIRCUIT.

IN EQUITY.

No. . SEPTEMBER TERM, 1899.

THE PENN PLATE GLASS CO. and WM. L. KANN, APPELLANTS,

vs.

THE FARMERS' LOAN AND TRUST CO., TRUSTEE, APPELLEE.

RECORD, Vol. I.

TURNER, McCLURE & ROLSTON,
J. S. & E. G. FERGUSON,
Solicitors for Appellees.

S. & S. B. SCHOYER,
Solicitors for Appellants.

1*a* In the United States Circuit Court of Appeals, Third Circuit, September Term, 1899.

THE PENN PLATE GLASS CO. and WM. L. KANN, Appellants,
vs.
THE FARMERS' LOAN AND TRUST CO., Trustee, Appellee. } No. —.

Among the rolls, records and judicial proceedings in the circuit court of the United States for the western district of Pennsylvania, at No. 6 of November term, 1896, may be found the following words and figures, to wit:

Docket Entries.

THE FARMERS' LOAN AND TRUST Company, a Corporation Duly Created by and under the Laws of the State of New York and a Citizen of the State of New York,
vs.
THE PENNSYLVANIA PLATE GLASS Company, a Corporation Duly Created and Existing under the Laws of the State of Pennsylvania and a Citizen of said State; The Penn Plate Glass Company, a Corporation Duly Created and Existing under the Laws of the State of Pennsylvania and a Citizen of said State, and William L. Kann, a Citizen of the State of Pennsylvania.

Bill filed July 8, 1896.

Same day subpœna issued, returnable first Monday of August next.

Same day motion for and order fixing time for hearing motion for the appointment of a receiver and motion for a preliminary injunction filed.

1896, July 10. Aff'ts of Jos. Garrison *et al.* and Whittlesey D. Searls on part of pl'ff filed.

1896, July 10. Subpœna returned served July 8, 1896, on the Pennsylvania Plate Glass Company by giving a true and attested copy thereof to Phillip Semmer, president of said defendant company, at his

2*a* office in the city of Pittsburg, also served on said defendant at same time. Notice of hearing of motion for preliminary injunction by giving copy of order to its said president. Same day served writ and like notice on Penn Plate Glass Co. by giving a true and attested copy to William L. Kann, president of said defendant company, at its office in the city of Pittsburg, giving him also a copy of said notice. Same day served writ and notice on William L. Kann by giving him a true and attested copy of said order at his office in the city of Pittsburgh. Mar. $9.00.

1896, July 10. Hearing of motion for appointment of receiver and motion for injunction adjourned to July 20, 1896.

1896, July 20th. Motion for receiver argued. *C. A. V.*

Same day exemplification of record of petition for order of sale, decree of sale and confirmation of sale filed.

Same day aff'ts of Francis T. Junkin, W. L. Kann, Emanuel Wertheimer and Julius Dreyfus filed.

1896, July 24. Aff't of J. W. Stoner filed. Insurance contract filed.

1896, Sept. 7th. Order denying motion for the appointment of receiver filed. Same day order extending time one week for filing plea, answer or demurrer filed.

1896, Sept. 14. Joint and several answer of Penn Plate Glass Co. and W. L. Kann filed. Demurrer of Penn Plate Glass Co. filed and demurrer of W. L. Kann filed.

1896, Oct. 28. Complainant's exceptions to the joint and several answer of Penn Plate Glass Co. and W. L. Kann filed.

1897, Jan'y 8. Order filed fixing Jan'y 16, 1897, for hearing and argument on the demurrers and complaimant's motion for reference to master to pass on exceptions to answer filed.

1897, Jan'y 16. Demurrer and exceptions to answers argued. *C. A. V.*

1897, March 1. Opinion of the court overruling complain-
3*a* ant's exceptions filed, and order filed overruling demurrer.

1897, March 31. Notice of taking testimony on part of complainant with acceptance of service of same filed.

1897, April 5. Replication filed.

1897, April 19. Testimony on part of complainant taken before T. F. Daniels, New York, received and filed.

1897, Dec. 9. Order appointing H. D. Gamble special examiner on part of defendants filed.

1898, Feb'y 10. Testimony and exhibits on part of defendants filed.

1898, April 16. Petition of complainant for appointment of a temporary receiver and to have certain insurance monies impounded or assigned to complainant and affidavit of W. L. Kann in answer thereto filed and motion argued. *C. A. V.*

1898, April 30. Motion to withdraw petition for temporary receiver, &c., filed and motion argued in part.

1898, May 4. Answer to motion to withdraw petition for receiver, &c., filed and argument concluded.

1898, May 7. Opinion filed allowing order to be drawn permitting complainant to withdraw petition for receiver, &c.

And now, May 26th, 1898, on presentation of petition, hearing of counsel, and upon due consideration thereof, leave is hereby granted to petitioner to file the supplemental bill as prayed for.

1898, May 28. Petition for leave to file supplemental bill and answer thereto filed.

1898, May 28. Supplemental bill filed by leave of court.

1898, May 21. Subpœna sur-supplemental bill issued, returnable first Monday of July next.

1898, June 27. Demurrer to supplemental bill filed.

1898, June 9. Præcipe filed for the appearance of J. H. Harrison, Esq., for the following parties, to wit: (1) Niagara Fire In-
4*a* surance Co. of New York, (2) Erie Insurance Co. of Buffalo, N. Y., (3) Insurance Company of the State of New York, (4) Globe Fire Insurance Co. of New York, (5) Broadway Fire Insurance Co. of N. Y., (6) E. C. Jameson and S. F. Frelinghuysen, as firm of Jameson & Frelinghuysen, attorneys-in-fact for Manufacturers' Lloyds of N. Y., (7) Schuylkill Fire Insurance Co. of Philadelphia, (8) State Insurance Co., of Philadelphia, (9) Manufacturers' and Merchants' Insurance Co., of Concord, N. H., (11) Washington Insurance Co., of Cincinnati, O., (12) Transatlantic Fire Insurance Co., of Germany, (13) North German Fire Insurance Co., of Germany, (14) Netherlands Fire Insurance Co., of the Hague.

1898, June 13. Præcipe for appearance of Watterson & Reid, for Connecticut Fire Insurance Company of Hartford, filed and for City Ins. Co.

1898, June 17. Præcipe filed for appearance of J. J. Miller, Esq., for Springfield Fire and Marine Insurance Company, garnishee.

1898, June 9. Præcipe for appearance of J. W. Hall, for the Ben. Franklin Insurance Company of Allegheny, filed.

1898, June 18. Petition and motion for the appointment of a receiver and sale of the mortgaged property filed.

1898, June 20. Copy of petition and notice of motion for the appointment of a receiver and sale of property served on Farmers' Loan and Trust Company in New York by William Henkel, marshal of southern district of New York.

1898, June 22. Answer of Farmers' Loan and Trust Company to petition of Penn Plate Glass Company, filed June 18th, filed.

1898, June 22. Petition of Penn Plate Glass Company for appointment of a receiver to collect and take charge of insurance monies *pendente lite* filed.

1898, June 23. Appearance of E. Z. Smith, Esq., for Artizans' Insurance Company, filed.

5*a* 1898, June 25. Answer of the Farmers' Loan & Trust Co. to the petition of Penn Plate Glass Company of June 22, 1898, for appointment of receiver to collect insurance monies filed.

1898, June 25. Petitions of the Penn Plate Glass Company for the appointment of a receiver argued. *C. A. V.*

1898, June 28. Præcipe for appearance of Baldwin & Collins, Esqs., for Hartford Insurance Company of Hartford, filed.

1898, June 29. Præcipe for appearance of S. S. Mehard, Esq., for Spring Garden Insurance Co., filed.

And now, June 29, 1898, after *agreement* and on due consideration, the foregoing demurrer is overruled with leave to respondents to answer over within twenty days.

1898, July 1. Præcipe for appearance of John A. Wilson, Esq., for Pittsburgh Insurance Company, filed

1898, July 1. Præcipe for appearance of Way, Walker and Morris, Esqs., for the Palatine Insurance Company of Manchester, England, filed.

1898, July 1. Præcipe for appearance of W. A. Lewis, Esq., for Monongahela Insurance Company of Pittsburgh, filed.

1898, July 2. Præcipe for appearance of Scott & Gordon, Esqs., for the following defendants, filed: Monongahela Insurance Company of Pittsburgh; Insurance Company of North America of Philadelphia; Teutonia Insurance Company of Allegheny; Armenia Insurance Company of Pittsburgh; City Insurance Company of Pittsburgh; Insurance Company of the State of Pennsylvania of Philadelphia; Franklin Fire Insurance Company of Philadelphia; Pennsylvania Fire Insurance Company of Philadelphia; Farmers' Insurance Company of York; Mutual Protection Fire Insurance Company of Boston; Assurance Company of America of New York; Eastern Insurance Company of New York; Lafayette Fire Insurance Company of New York; Westchester Fire Insurance Company of New York; Manhattan Insurance Company of New York;
6a Pacific Fire Insurance Company of New York; Norwood Insurance Company of New York; Hanover Fire Insurance Company of New York; Queen (America) Insurance Company of New York; Victoria Fire Insurance Company of New York; National Standard Insurance Company of New York; Mutual Fire Insurance Company of New York; Farragut Fire Insurance Company of New York; Colonial Assurance Company of New York; Commonwealth Insurance Company of New York; Citizens' Insurance Company of New York; Ætna Insurance Company of Hartford; National Fire Insurance Company of Hartford; American Central Insurance Company of St. Louis; Merchants' Insurance Company of Providence; Virginia State Insurance Company of Richmond; Atlanta Home Insurance Company of Atlanta; St. Paul Fire and Marine Insurance Company of St. Paul; Grand Rapids Fire Insurance Company of Grand Rapids; Southern Insurance Company of New Orleans; Scottish Union and National Company; Commercial Fire Insurance Company of Scotland; Caledonian Insurance Company; Scottish Alliance Insurance Company of Glasgow; North British and Mercantile Insurance Company; Commercial Union Association Company, Limited; Atlas Assurance Company; Union Assurance Society; Phœnix Assurance Company; Imperial Assurance Company, Limited; The Northern Assurance Company; Liverpool and London and Globe Insurance Company of Liverpool; Palatine Insurance Company; Manchester Fire Assurance Company; Hamburg-Bremen Fire Insurance Company; Aachen and Munich Fire Insurance Company of Munich; Aachen-Leipzig Insurance Company of Aix-la-Chapelle; Magdeburg Fire Insurance Company of Magdeburg; Svea Association of Gothenburg, and the Urbaine Belgæ Insurance Company of Brussels; William Adams, J. Stanley Lockwood and Remy R. Foreman, all of New York, constituting the firm of Adams, Lockwood & Foreman, attorneys-in-fact of the Traders' Fire Lloyds Insurance Company of New York.

7a 1898, July 1. Appearance of George Tucker Bispham for the Pennsylvania Fire Insurance Company filed.

1898, July 2. Stipulation of the Farmers' Deposit national bank to hold bonds with certificate of Emanuel Wertheimer as to ownership

thereon, like stipulation with certificate of no interest thereon, stipulation of Emanuel Wertheimer and W. L. Kann as to their liability, stipulation for withdrawal of bonds from participation in insurance funds, schedule of bonds deposited in Farmers' Deposit national bank by Emanuel Wertheimer July 2nd, 1898, and bond of Emanuel Wertheimer, receiver, with approval of the court thereon, filed.

1898, July 2. Decree appointing Emanuel Wertheimer receiver of the insurance monies filed.

1898, July 12. Answer to supplemental bill filed.

1898, July 23. Order filed extending time for answering or demurring to the first Monday of September, 1898, as to the defendants for whom Scott and & Gordon have entered their appearance.

1898, July 26. Præcipe for appearance of Dalzell, Scott & Gordon for the Citizens' Insurance Company of St. Louis, Mo., filed.

And now, August 3d, 1898, the Springfield Fire and Marine Insurance Company of Springfield, Mass., have paid this day to the receiver the full amount of admitted loss.

S. SCHOYER, JR.,
Attorney for E. W., Receiver.

And now, August 5th, 1898, the receiver, acknowledges payment in full of insurance from the following companies, defendants:

American Fire Ins. Company of New York, Aachen Leipziger, Limited, Germany, American Central, Missouri, Aachen Munich, Limited, Germany, Ætna, Connecticut, Atlanta Home, Georgia, Atlas Assurance, Engla-d, Artisans', Pennsylvania, Armenia, Pennsylvania, Assurance of America, New York, Ben. Franklin,
8a Pennsylvania, Caledonia, Scotland, Citizens', Missouri, Citizens', New York, City Ins., Pittsburgh, Colonial Assurance, New York, Commercial Union, England, Commonwealth, New York, Equitable Fire and Marine, Rhode Island, Erie Fire, New York, Farmers', York, Pennsylvania, Farragut, New York, Fire Association of Philadelphia, Franklin of Philadelphia, Grand Rapids, Michigan, Hamburg-Bremen, Germany, Hamburg Underwriters', Germany, Hanover, New York, Hartford Fire, Connecticut, Insurance Company of North Am., Pa., Insurance Company of State of Penna., Lafayette Fire Insurance Company, Law Union Crown F. & L., England, Liverpool, London & Globe, England, Manchester Fire England, Merchants' and Manufacturers' Fire, Maryland, Merchants', Rhode Island, Monongahela, Penna., Mutual Fire, New York, National Fire, Connecticut, Netherlands Fire, Holland, Niagara Fire, New York, North British & Merchants', England, North German Fire, Germany, Norwood, New York, Pacific Fire, New York, Penna. Fire, Penna., Phœnix, New York, Phœnix Assurance Co., England, Pittsburgh Ins. Co., Penna., Queene, New York, Scottish Union & National, Scotland, Southern, Louisiana, Svea Assurance, Sweden, Teutonia, Pennsylvania, Union Assurance, England, Underwriters' Policy, New York, Victoria Fire, New York, Virginia F. & M., Virginia, Washington Ins., Ohio, Westchester Fire, New York, Palatine Ins. Co., Limited, England, Eastern, New York,

St. Paul Fire and Marine, Magdeburg, Germany, Traders' Lloyds Ins. Co., National Standard, Transatlantic, Germany, Imperial, London, Continental, New York, Niagara, New York, Northern, London.

S. SCHOYER, JR.,
Attorney of E. Wertheimer, Receiver.

1898, August 10. Notice of complainant's counsel to produce witnesses at the hearing fixed for August 16th, filed.

1898, August 16. Order entered that The Farmers' Loan &
9*a* Trust Co., pl'ff, be authorized to expend necessary sums to keep the mortgaged premises safe and free from injury, &c.

1898, August 16. Ordered that testimony on both sides be taken as closed, and this cause and the supplemental bill be set down for argument on Wednesday, Sept. 28th, 1898, on supplemental bill, original bill, answers, replications and testimony already taken under the original bill, and such testimony as may be taken under the supplemental bill and answer prior to Sept. 28th, 1898.

1898, August 27th. Replication to answer to supplemental bill filed.

1898, August 31. The following insurance companies have paid the amounts of their policies in full:

Connecticut Fire Ins. Co., Hartford; Schuylkill Ins. Co., of Pennsylvania; Scottish Alliance; Capital Ins. Co. of Concord; Argus Ins. Co.; L'Urbaine Belgæ.

S. SCHOYER, JR.,
Attorney of E. Wertheimer, Receiver.

1898, Sept. 5. Notice of taking testimony with exceptance thereof filed.

1898, Sept. 5. Agreement of counsel in regard to testimony filed.

1898, Oct. 6. Petition of the Penn Plate Glass Company for the appointment of a care-taker for the mortgaged premises filed.

And now, Oct. 6th, 1898, on motion of counsel for petitioner, a rule is granted on complainant to show cause why it should not be removed from the care and control of the mortgaged premises and a substitute appointed, returnable Oct. 10th, 1898, at 10 o'clock.

BY THE COURT.

1898, Oct. 17. Petition of the Manhattan Fire Insurance Company of New York *et al.*, for an order directing Emanuel Wertheimer, receiver, to stay all proceedings in actions in the supreme court of the State of New York against said petitioners until final decree
shall have been entered in the suits in equity brought by
10*a* said petitioners against said receiver and the Penn Plate Glass Company filed.

And now, to wit, October 17th, 1898, the foregoing petition presented at chambers, and thereupon leave is granted to file the same and rule is granted upon Emanuel Wertheimer, receiver of the Penn Plate Glass Company, to appear and show cause, if any he

has, why the prayer of the said petitioners should not be granted, returnable the 17th day of October, 1898, and the court do further fix the said rule for hearing on the 24th day of October, 1898, at 10 o'clock a. m.; and it is further ordered that the said Emanuel Wertheimer, receiver of the Penn Plate Glass Company, do stay all proceedings in said suits pending in the State of New York until after the hearing of this rule, to wit, until Oct. 25th, 1898.

BY THE COURT.

And now, Oct. 24th, 1898, the motions of Scott & Gordon, Esqs., on behalf of the Manhattan Fire Insurance Company, the Insurance Company of the State of New York, the Globe Insurance Company of the City of New York, Broadway Insurance Company of the City of New York, and Frank Hiscock *et al.*, composing the Manufacturers' Lloyds, to stay further proceedings in actions instituted by Emanuel Wertheimer, as receiver of the Penn Plate Glass Co., in the supreme court of the State of New York, against the said insurance companies, and also for leave to file separate bills against the Penn Plate Glass Co. and Emanuel Wertheimer as receiver, to set aside the award of the appraiser adjusting the amount of the losses claimed under said policies, coming on to be heard, and upon consideration thereof, it is now ordered that, in the event that each of said insurance companies above named shall execute and file in this court its individual bond as hereinafter provided, with a surety by a company duly authorized thereto and approved by this court, on or before Friday, October 28th, 1898, the said actions shall be stayed as to such company until the further order of the court; the bond of the
11*a* Manhattan Fire Insurance Company shall be in the sum of $22,000; the bond of the Insurance Company of the State of New York shall be in the sum of $7,000; the bond of the Globe Insurance Company of the City of New York shall be in the sum of $4,000; the bond of the Broadway Insurance Company of the City of New York shall be in the sum of $2,500; the bond of Frank Hiscock *et al.*, composing the Manufacturers' Lloyds, shall be in the sum of $5,000; each of said bonds to have the following condition, namely: that the insurance company (furnishing the bond) will pay to Emanuel Wertheimer as receiver of the Penn Glass Co. the amount of any decree that may be rendered in the said action or proceeding to be brought by it upon any cross-bill that may be filed by the said receiver, setting up his cause of action upon the policy or policies of insurance issued by such company, or the awards thereon, together with the costs of the action or proceeding, and all costs that may have accrued or that become taxable in the action now pending against it in the supreme court of New York; then the said obligation to be void, otherwise to be of full force and effect; it is further ordered that, in the event that the said bonds as hereinbefore directed shall be filed within the time aforesaid, then and in that event the said several companies above named shall have leave to file their said bills in equity; with leave to Emanuel Wertheimer, receiver, to file his cross-bill to each of the said bills; it is further

ordered that the pleadings shall be so conducted as that the issues shall be duly framed and the testimony on behalf of the plaintiff shall be concluded within thirty days after the appointment of an examiner, who shall be appointed within five days after issue joined; it is further ordered and directed that, in the event any of the said bonds shall not be filed as above directed on or before Friday, October 28th, 1898, that then the said motions for leave to file said bills and for the stay of the New York actions shall be denied
12*a* and the conditional stay granted as to such defaulting company as aforesaid shall be and the same is hereby vacated.

1898, Oct. 28. Answer of Farmers' Loan & Trust Company to petition of Penn Plate Glass Co. for the removal of Farmers' Loan & Trust Co., as care-taker of the mortgaged premises filed.

1898, Oct. 28. Affidavit of John A. Nichols with order thereon extending time for filing bond of Manufacturers' Lloyds to Nov. 1st, 1898, inclusive, and staying proceedings granted in order *to* Oct. 24th to said date filed.

1898, Oct. 28. Bonds of the Manhattan Fire Ins. Co. of New York, the Globe Fire Ins. Co. of the City of New York and Broadway Ins. Co., of City of New York, approved and filed.

1898, Nov. 1. Bonds of the Manufacturers' Lloyds and the Insurance Company of the State of New York, approved and filed.

1898, Nov. 1. Bond of the Manufacturers' Lloyds and the Insurance Company of the State of New York, approved and filed.

And now, to wit, November 12th, 1898, it appearing to the court that the Farmers' Loan & Trust Company, which was authorized and empowered by an order of this court made on the 16th day of August, 1898, to expend such sums of money as might be reasonably necessary to keep the premises described in the mortgage for the foreclosure of which the bill in equity in this case was filed, safe and free from injury by the elements or otherwise, has resigned as care-taker of the said property the court appoint Fred. C. Leonard as care-taker of said property, and the said Leonard is ordered and directed to go upon and visit and examine said property, and ascertain what in his judgment is requisite and necessary in the way of employment of watchmen, purchasing material, etc., to properly protect and take care of said property and for covering the same, and thereupon to make report to the court, together with a
13*a* statement of the proposed expenditure; notice of which said report, before any further order is made thereon, shall be given to the local attorneys of record of the parties, so as to afford an opportunity to the said parties to oppose any charge or expenditure which they may think too great or unreasonable which objection shall be filed in writing in six days thereafter.

BY THE COURT.

1898, Nov. 12. Withdrawal by defendant of petition for removal of the Farmers' Loan and Trust Company as care-taker filed.

1898, Nov. 10. Resignation of the Farmers' Loan & Trust Company as care-taker filed.

1898, Nov. 26. Report of F. C. Leonard as care-taker, &c., filed.

1898, Nov. 28. Chancery subpœna sur supplemental bill returned served as follows: June 4th, 1898, at Philadelphia, in my district, served the within writ on Insurance Company of North America, at Philadelphia, by giving a true and attested copy thereof to E. L. Ellison, vice-president of the said company, and on Spring Garden Insurance Company of Philadelphia, by giving like copy *of* Clarence E. Porter, secretary of said company, and on Insurance Company of the State of Pennsylvania, at Philadelphia, by giving like copy to Albert B. Earle, secretary of said company, and on Franklin Fire Insurance Company of Philadelphia, by giving a like copy to George T. Reger, vice-president of said company, and on Pennsylvania Fire Insurance Company of Philadelphia, by giving a like copy to C. W. Merrill, assistant secretary of said company, and on Schuylkill Fire Insurance Company of Philadelphia, by giving a like copy to Alexander Balfour, president of said company, and on Springfield Fire and Marine Insurance Company of Springfield, Mass., by giving like copy to Chas. Platt, Jr., State designated agent of said company, and on Assurance Company of America of
14*a* New York, National Standard Insurance of New York, and on Southern Insurance Company of New Orleans, La., and on Commercial Union Association Company, Limited, of London, by giving like copies to Charles Williams, State designated agent of said companies, and on Westchester Fire Insurance Company of New York, by giving copy to Charles F. Evans, State designated agent of said company, and on Manhattan Insurance Company of New York, by giving like copy to William Kane, designated agent of said company, and on Pacific Fire Insurance Company of New York, by giving a like copy to J. W. Buckman, State designated agent of said company, and on Victoria Fire Insurance Company of New York, and on Virginia State Insurance Company of Richmond, Virginia, and on Union Assurance Society, of London, England, and on Transatlantic Insurance Company, of Hamburg, Germany, and on Phœnix Assurance Company of London, England, by giving like copies to George E. Wagner, State designated agent for said companies, and on Globe Fire Insurance Company of New York, and on Grand Rapids Fire Insurance Company, of Grand Rapids, Michigan, by giving like copies to E. R. Hunt, State designated agent of said companies, and on Insurance Company of the State of New York, and on Atlanta Home Insurance Company of Atlanta, Georgia, by giving like copies to Wm. W. Curtin, designated agent of said companies, and on Niagara Fire Insurance Company of New York, and on Connecticut Fire Insurance Company of Hartford, Conn., and on Coledonian Insurance Company of Edinburgh, Scotland, by giving like copies to Henry W. Brown, designated agent for said companies, and on Farragut Assurance Company of New York, and on North German Fire Insurance Company of Hamburg, Germany, by giving like copies to Wm. C. Bennett, State designated agent for said companies, and on Citizens' Insurance Company of New York, and on Scottish Union and National Insurance Company of Edinburgh, Scotland, by
15*a* giving like copies to Samuel D. Hawley, State designated agents for said companies, and on Citizens' Insurance Com-

pany of St. Louis, Missouri, and on Merchants' and Manufacturers' Fire Insurance Company of Baltimore, Maryland, by giving copies to William Brockie, State designated agent for said companies, and on North British and Mercantile Insurance Company of London, England, by giving a like copy to Thomas C. Foster, State designated agent for said company, and on Liverpool and London and Globe Insurance Company, of Liverpool, England, by giving a like copy to Atwood Smith, State designated agent of said company, and on Manchester Fire Assurance Company of Manchester, England, by giving a copy to James S. Young, State designated agent of said company, and on

June 6th. On State Insurance Company of Philadelphia, by giving a like copy to Charles F. Walter, vice-president of said company, and on Lafayette Fire Insurance Company of New York, by giving a copy to Charles F. Walter, designated State agent of said company, and on Broadway Insurance Company of New York, by giving a like copy to *to* B. Mitchell Simpson, State designated agent of said company, and on Magdeburg Fire Insurance Company of Magdeburg, Germany, by giving a like copy to William Arrott, State designated agent of said company, and on Ætna Insurance Company of Hartford, Connecticut, by giving a like copy to Edward J. Durban, State designated agent of said company, and on Hartford Fire Insurance Company of Hartford, Conn., by giving a like copy to Charles A. Hexamer, State designated agent of said company, and on the Merchants' Insurance Company of Providence, and on St. Paul Fire and Marine Insurance Company of St. Paul, by giving like copies to Louis M. Wagner, State designated agent of said companies, and on Atlas Assurance Company of London, England, by giving a like copy to Chas. E. Mather, State designated agent of said company, and on Imperial Insurance Company, Lim-
16*a* ited, of London, England, and on the Northern Assurance Company, of London, England, by giving like copies to James A. McGann, State designated agent of said companies, and on Palatine Insurance Company of Manchester, England, by giving a like copy to Charles E. Lister, State designated agent of said company, and on Hamburg-Bremen Fire Insurance Company of Hamburg, Germany, by giving a like copy to Albert E. Earle, State designated agent of said company, and Aachen and Munich Fire Insurance Company, of Munich, Germany, and on Svea Association of Gotheuburg, Sweden, and on Netherlands Insurance Company of Zutphen, in the Netherlands, by giving like copies to Chas. R. Peck, State designated agent of said companies, and on National Fire Insurance Company of Hartford, by giving a like copy to Thomas McElmell, agent of said company, at its office, 420 Walnut St., Philadelphia, and on

June 4th. On Norwood Insurance Company of New York, by giving a like copy to Louis C. Madiera, agent of said company, at its office, No. 320 Walnut street, Philadelphia, and on June 6th on Colonial Assurance Company of New York, by giving a like copy to Wm. Arrott, agent of said company, at its office, 115 South 4th street, Philadelphia, and on Commonwealth Insurance Company of

New York, by giving a like copy to James F. Stone, agent of said company, at its office, 333 Walnut street, Philadelphia, and on American Central Insurance Company of St. Louis, by giving a like copy to Louis M. Wagner, agent of said company, at its office 328 Walnut street, and on

June 8th. On Erie Fire Insurance Company of Buffalo, by giving a like copy to W. Bennett Gough, agent of said company, at its office, 218 South 4th street, Philadelphia, and on June 8th, on Capital Fire Insurance Company of Concord, by giving a like copy to J. A. Bailey, State designated agent of said company, and on

June 7th. On Farmers' Fire Insurance Company of York, Pa., by giving a like copy to David Strickler, secretary of said com-
17*a* pany, and making known the contents to each of them, and as to Aachen-Leipzig Insurance Company of Aix-la-Chapelle, Germany, not found in the district.

So answers—

JAMES B. REILLY,
U. S. Marshal,
Per ABRAM B. MYERS, *Deputy.*

Mar. $129.80.

PITTSBURGH, *May 31st*, 1898.

Service of the writ herein accepted for the Penn Plate Glass Company and W. L. Kann.

S. SCHOYER,
S. B. SCHOYER,
Attorneys.

May 31st, 1898, at Pittsburgh, Pa. Service of the within accepted for the Penn Plate Glass Company and W. L. Kann by S. & S. B. Schoyer, Esqs., their attorneys.

June 2, 1898, at Pittsburgh, Pa. Served the within writ on the City Insurance Company of Pittsburgh, by giving a true and attested copy thereof to A. S. Bishop, secretary of said company, and on the Pittsburg Insurance Company of Pittsburgh, by giving a like copy to R. J. McKnight, secretary of said company; and on the Monongahela Insurance Company of Pittsburgh, by giving a like copy to J. H. Claney, secretary of said company, and on the Armenia Insurance Company of Pittsburgh, by giving a like copy to W. D. Gill, secretary of said company; and on the Artisans' Insurance Company of Pittsburgh, by giving a like copy to Chas. P. Smith, secretary of said company; and on the Ben. Franklin Insurance Company of Allegheny, by giving a like copy to W. A. Ford, secretary of said company; and on the Teutonia Insurance Company of Allegheny, by giving a like copy to Henry Gerwig, president of said company; and on the Washington Insurance Company of Cincinnati,
18*a* Ohio, by giving a like copy to R. C. Oehmler, State designated agent for said company in the State of Pennsylvania, on the 4th day of June, 1898.

So answers—

FRED. C. LEONARD,
U. S. Marshal,
Per JOE H. IRONS, *Deputy.*

Mar. $20.18.

June 4th, 1898, at Wilkesbarre, Penna. Served the within writ on the Hanover Fire Insurance Company of New York, by giving a true and attested copy thereof to A. F. Derr, designated agent for said company in the State of Pennsylvania.

So answers—

FRED. C. LEONARD,
U. S. Marshal,
Per S. A. BACHARACH, *Deputy.*

Mar. $20.12.

1899, Jan. 19. Petition of Penn Plate Glass Company for leave to sell ten steam-engines filed. *Eo die* rule granted on complainant to show cause why prayer of said petition should not be granted returnable Jan. 21, at 10 a. m.

1899, Jan. 21. Report of F. C. Leonard as care-taker filed.

1899, Jan. 25. By order filed, Fred C. Leonard, care-taker, is directed to sell to the American Plate Glass Company the ten stationary engines now upon the property of the defendant company at Irwin, Pa., for the sum of one hundred dollars each, payable in cash upon the delivery of the same; and to hold the amount received therefrom in substitution for said property.

1899, Feb. 24. Opinion of the court filed, holding that the insurance fund, to the extent of all valid outstanding bonds represented by the trustee, is stamped with an equitable lien, and that it is the duty and right of this court to enforce it, and allowing a decree of foreclosure.

And now, July 25th, 1899, this case having come on for hearing upon the original and supplemental pleadings, and upon the
19*a* proofs, after argument by counsel, and consideration thereof, it is ordered, adjudged and decreed, that the mortgage set forth in the original bill of complaint herein, made by the defendant, The Pennsylvania Plate Glass Company, to the complainant, The Farmers' Loan & Trust Company bearing date the first day of January, 1891, is a valid and subsisting mortgage and constitutes a first lien, except as such lien has been released as herein stated, upon the mortgaged premises and property situated in North Huntington township, Westmoreland county, Pennsylvania; that since the making of said mortgage, a small strip of said premises was, in consideration of the receipt of $300 by the complainant herein, duly released from the lien of said mortgage by release executed by the said complainant and recorded in the office of the recorder of Westmoreland county, and the said strip of land released is no longer subject to the lien of said mortgage; and it appearing to the court that since the filing of the opinion of the court herein, the Pennsylvania Railroad Company, claiming to exercise the right of eminent domain under the laws of the State of Pennsylvania, for the purpose of widening, straightening and improving its tracks, has entered into possession of a certain portion of the said mortgaged property and premises, and has given bond in the court of common pleas of Westmoreland county, Pennsylvania, to pay all damages resulting from the said taking and condemnation, it is further ordered, ad-

judged and decreed, that the complainant, as such mortgagee, has a first lien upon any and all damages arising from the condemnation of the mortgaged premises which may be collected under said bond, or because of said taking and condemnation, to the extent hereinafter specified; that the lien of the said mortgage is prior and superior to any other lien or claim of any kind or description in favor of any party to this cause; that default has been made in the payment of interest due on the bonds secured by said mortgage entitling the complainant to a sale of the said mortgaged property herein-
20*a* above described, unless the defendants or some of them shall pay the amount of the entire bonded indebtedness secured by said mortgage, with all the costs and expenses of this suit at a short day to be fixed by the court; that there are secured by said mortgage lien a large number of bonds and coupons, with interest thereon, of the said defendant, The Pennsylvania Plate Glass Company, which are outstanding and past due, such coupons so outstanding and unpaid being coupons which matured and fell due on the first day of July, 1895, and every six months after that date; and it appearing to the court that the defendant, The Pennsylvania Plate Glass Company, executed two hundred and fifty bonds of one thousand dollars each, being bonds to secure which the mortgage under foreclosure herein was executed and delivered, and that said complainant thereupon certified the same and delivered them upon the order of the said Pennsylvania Plate Glass Company, it is further ordered, adjudged and decreed, that it be referred to William R. Blair, Esq., as special master, to ascertain and report, which of said bonds, so certified, as aforesaid, are entitled to the security of said mortgage, the principal sums due and unpaid on said bonds, and the entire aggregate amount of such principal sums; that upon all said bonds which said special master shall report to be entitled to the security of said mortgage, the complainant is entitled to recover not only the amount of the principal of said bonds and the coupons thereon, but also interest upon the said coupons from the maturity thereof until the date of this decree, and interest on the said principal from the date of the maturity thereof until the date of this decree, and interest on the said principal from the date of the maturity of the last coupon, to wit, the first day of July, 1899, to the date of this decree; and it appearing to the court that a very large part of the said mortgaged property has been destroyed by fire, and that the defendant, The Pennsylvania Plate Glass Company, is insolvent, it is further ordered, adjudged and decreed,
21*a* that unless the parties defendant, or some of them, shall, on or before the expiration of twenty days from the entry of this decree, pay the complainant its costs in this cause to be taxed and its compensation as trustee, with its counsel fees and other expenses and other disbursements as the same may be fixed by this court, and the entire sum due for principal and interest, and interest on unpaid coupons up to the date of this decree, with interest thereon from the date hereof, then all the said mortgaged premises and property remaining after said fire, subject only to such easement or rights therein as the said Pennsylvania Railroad Company may have acquired, or may

hereafter acquire by virtue of the aforesaid taking and condemnation proceedings, shall be sold as an entirety, and without an appraisement or right of redemption, by William R. Blair, special master, at public auction to the highest bidder therefor, after notice published, for not less than thirty-five thousand ($35,000) dollars; that the fund to arise from the said sale, together with the said three hundred dollars received by the complainant at the time of the release hereinbefore described, shall be applied to the payment of the expenses of the said sale, to the payment of the costs of this suit, to the payment of the compensation of the complainant herein as trustee, and to the payment of the bonds and coupons of the defendant, The Pennsylvania Plate Glass Company, secured by the mortgage foreclosed hereby, with interest thereon, or if the fund be not sufficient to pay the same, then to the payment of the same *pro rata;* that the defendants, W. L. Kann and The Penn Plate Glass Company, and the plaintiff, The Farmers' Loan & Trust Company, be and they are hereby authorized and directed to execute and deliver, under the direction of the special master making such sale, conveyances executed by them respectively by way of confirmation and further assurance of title to the said purchaser or purchasers, his, its, or their assigns, of
22*a* all and singular the mortgaged property and premises, and every part and parcel thereof, of every kind and description, and wherever located, hereby, directed to be sold by the said special master, and that the form of said conveyance, and the mode of execution thereof shall be settled and approved by the court or a judge thereof, if any question should arise as to the form and sufficiency thereof; and that such conveyances shall be delivered to said purchaser or purchasers, his, its, or their assigns, contemporaneously with the deed or deeds of the said special master; that the said complainant as trustee under said mortgage has, and is entitled to, an equitable first lien upon all the insurance moneys collected by Emanuel Wertheimer as receiver thereof; that the said Wertheimer, as such receiver, shall pay, without further order, out of the said insurance moneys, all the costs, charges and expenses of this suit under the supplemental bill herein; and it is further ordered, adjudged and decreed, that in case there shall be any deficiency upon the amount of the entire mortgage debt, as fixed in the manner hereinbefore specified, with interest thereon from the date hereof, after making the payment hereinbefore provided, all damages and moneys which may be due and be paid from and by said Pennsylvania Railroad Company by virtue of the said taking and condemnation of a part of the mortgaged property as hereinbefore recited, shall be applied to the payment of the costs, expenses and charges of the complainant incurred in the said condemnation proceedings, or in any other proceedings taken for the purpose of collecting such damages, including its own compensation and a reasonable compensation for its counsel for their services in said condemnation, or other proceedings, as the same may be fixed; and to the payment of such deficiency on the entire mortgage debt, with interest thereon, in full, if the said damages and moneys are sufficient, and if they are not sufficient, then to the payment of the same *pro rata;* and the defendants, the

23*a* said Pennsylvania Plate Glass Company and W. L. Kann, are hereby ordered and directed to pay to the complainant herein, without further order of this court, such amount of the said damages arising from said condemnation of said mortgaged premises and property which may be paid to them, or either of them, as may be necessary to pay said costs, expenses and compensation, and, any deficiency which may remain upon said entire mortgage debt, with interest, as aforesaid; if after making the above payments there shall remain any surplus of the said damages and moneys so to be collected from said railroad company, the same shall be paid to the Penn Plate Glass Company.

1899, August 1. Order canceling the bond of the Manhattan Life Insurance Company and directing delivery of same to said company with receipt of att'ys of said company therefor filed.

1899, August 1. Petition for appeal with order thereon allowing appeal and directing that a bond in $1,000 be filed with security to be approved by the clerk filed.

1899, August 2. Bond in the sum of one thousand dollars approved and filed.

1899, August 3. Stipulation of counsel *in re* appeal filed.

1899, August 9. Citation awarded and issued.

1899, August 11. Citation served upon J. S. & E. G. Ferguson, Esqs.

1 In the United States Circuit Court, Western District of Pennsylvania, November Term, 1896. In Equity.

THE FARMERS' LOAN AND TRUST COMPANY, Trustee,
vs.
THE PENNSYLVANIA PLATE GLASS COMPANY, THE PENN Plate Glass Company, and Wm. L. Kann. } No. 6.

Docket Entries.

Among the rolls, records and judicial proceedings in the circuit court of the United States for the western district of Pennsylvania at No. 6, Nov. term of 1896, in equity, may be found the following words and figures, to wit:

THE FARMERS' LOAN AND TRUST COMPANY, a Corporation Duly Created by and under the Laws of the State of New York and a Citizen of the State of New York,
vs.
THE PENNSYLVANIA PLATE GLASS COMPANY, a Corporation Duly Created and Existing under the Laws of the State of Pennsylvania and a Citizen of said State; The Penn Plate Glass Company, a Corporation Duly Created and Existing under the Laws of the State of Pennsylvania and a Citizen of said State, and William L. Kann, a Citizen of the State of Pennsylvania.

2 Bill filed July 8, 1896. Same day subpœna issued returnable first Monday of August next. Same day motion for

and order fixing time for hearing motion for the appointment of a receiver and motion for a preliminary injunction filed.

1896, July 10. Aff'ts of Jos. Garrison *et al.* and Whittlesey D. Searls on part of plaintiff filed.

1896, July 10. Subpœna returned served July 8, 1896, on the Pennsylvania Plate Glass Company by giving a true and attested copy thereof to Phillip Semmer, president of said defendant company, at his office in the city of Pittsburg; also served on said defendant at same time notice of hearing of motion for preliminary injunction by giving a copy of order to its said president. Same day served writ and like notice on Penn Plate Glass Co. by giving a true and attested copy to William L. Kann, president of said defendant company, at its office in the city of Pittsburg, giving him also a copy of said motion. Same day served writ and notice on William L. Kann by giving him a true and attested copy of said order at his office in the city of Pittsburg. Mar. fees, $9.00.

1896, July 10. Hearing of motion for appointment of receiver, and motion for injunction adjourned to July 20, 1896.

1896, July 20. Motion for receiver argued. *C. A. V.* Same day exemplification of record of petition for order of sale. Decree of sale and return and confirmation of sale filed. Same day aff'ts of Francis T. Junkin, Wm. L. Kann, Emanuel Wertheimer and Julius Dreyfus filed.

1896, July 24. Aff't of J. W. Stoner filed. Insurance contract filed.

1896, Sept. 7. Order denying motion for the appointment of receiver filed.

Same day order extending time one week for filing plea, answer, or demurrer filed.

3 1896, Sept. 14. Joint and several answer of Penn Plate Glass Co. and W. L. Kann filed. Demurrer of Penn Plate Glass Co. filed, and demurrer of W. L. Kann filed.

1896, Oct. 28. Complainant's exceptions to the joint and several answer of Penn Plate Glass Co. and W. L. Kann filed.

1897, Jan. 8. Order filed fixing Jan. 16, 1897, for hearing arguments on the demurrer and complainant's motion for reference to a master to pass on exception to answer filed.

1897, Jan. 16. Demurrers and exceptions to answers argued *C. A. V.* 1897, March 1, opinion of the court overruling complainant's exceptions filed, and order filed overruling demurrers. 1897, Mar. 31st, notice of taking testimony on part of complainant with acceptance of service of same filed. 1897, April 5th, replication filed. 1897, April 19th, testimony on part of complainant taken before T. F. Daniels, New York, received and filed. 1897, Dec. 9th, order appointing H. D. Gamble, special examiner on part of defendants filed.

1898, Feb'y 10th. Testimony and exhibits on part of defendants taken before H. D. Gamble, examiner, filed.

Bill of Complaint.

To the honorable the judges of the circuit court of the United States for the western district of Pennsylvania, in equity sitting:

The Farmers' Loan and Trust Company, a corporation duly created by and under the laws of the State of New York, and a citizen of the State of New York, having its principal office and place of abode in the city of New York, brings this, its bill of complaint, against the Pennsylvania Plate Glass Company, a corporation duly created and existing under the laws of the State of Pennsylvania, a citizen of the State of Pennsylvania, and having its principal office and place of abode in the city of Irwin, county of Westmore-
4 land, and State of Pennsylvania, and against the Penn Plate Glass Company, a corporation duly created and existing under the laws of the State of Pennsylvania, a citizen of the State of Pennsylvania, and having its principal office and place of abode in the city of Irwin, county of Westmoreland and State of Pennsylvania, and against William L. Kann, a citizen of the State of Pennsylvania, residing in said city of Irwin, in said State.

And thereupon your orator complains and says:

I. Your orator is a corporation, bearing the corporate name of the Farmers' Loan and Trust Company, duly created under the laws of the State of New York, and as such corporation is fully authorized and empowered to hold in trust the property conveyed to it in trust, as hereinafter fully stated, and to execute the trusts reposed in it under and by virtue of the mortgage or deed of trust hereinafter described.

II. The defendant, The Pennsylvania Plate Glass Company (hereinafter called the mortgage company), is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, for the purpose of constructing, building, owning and operating plate-glass works in the city of Irwin in said State; the defendant, The Penn Plate Glass Company, is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, for the purpose of constructing, owning and operating plate-glass works in said city of Irwin in said State; and the defendant, William L. Kahn, is a citizen of the State of Pennsylvania.

III. The said defendant, The Mortgagor Company, being thereunto by law duly authorized, did, on or about the first day of January, 1891, execute and issue its certain first-mortgage bonds, dated that day, and numbered from 1 to 250 consecutively, being for the sums respectively of one thousand dollars each, said bonds aggre-
5 gating in all the sum of two hundred and fifty thousand dollars of principal, payable in United States gold coin, on the first day of January in the year 1901, and bearing interest from the first day of January, 1891, at the rate of six per cent. per annum, payable semi-annually, in like gold coin, at the office of your orator in the city of New York, on the first days of July and January in each and every year, on the presentation and surrender of certain

annexed coupons as they severally matured. Upon each of said bonds there was a certificate, made by your orator, stating that said bond was one of a series of bonds referred to in the mortgage therein mentioned, being the mortgage hereinafter described; all of which by the said bonds and each of them, and the said certificates thereon, to which your orator, for greater certainty, refers, will more fully and at large appear.

IV. On or about the said first day of January, 1891, the mortgagor company, to secure the payment of the bonds hereinbefore mentioned, being thereunto by law duly authorized, executed, acknowledged and delivered to your orator, The Farmers' Loan and Trust Company, as trustee, its certain mortgage or deed of trust, and therein thereby conveying and transferring to your orator, as trustee, and to its successor or successors and assigns, forever, all the following property and premises by the following description, to wit: (the words "party of the first part," in said description, referring to the mortgagor company:

"All that certain tract of land, with the buildings and improvements thereon, situate in North Huntington township, county of Westmoreland and State of Pennsylvania, bounded and described as follows: Beginning at a post on the northwest corner of Fourth street and Broadway avenue, in the town of North Irwin; thence by line of said Fourth street north 1 degree 18 minutes east, nine hundred and fifteen (915) feet to a post; thence by land of C. W. Pool north 88 degrees 42 minutes west, five hundred and
6 eighty-six (586) feet to a post; thence by same north 65 degrees 50 minutes west, four hundred and two feet and six inches (402 ft. 6 in.) to a post; thence by same south 2 degrees 57 minutes east, four hundred and seventy-six (476) feet to a public road and line of Swigger's heirs; thence by same south 65 degrees 59 minutes east, one hundred and fifteen (115) feet to a post; thence by same south 23 degrees 10 minutes west, five hundred and twenty-seven (527) feet to a post on line of Broadway avenue; thence by said avenue south 49 degrees 42 minutes east, one hundred and three feet to a post; thence by said avenue south 88 degrees 42 minutes east, nine hundred and thirty-one (931) feet to a post at Fourth street, the place of beginning; containing twenty-one (21) acres, more or less; being a part of tract of land called "Fruit Hill," for which a patent was issued by the Commonwealth of Pennsylvania to William Elliott, dated 2d May, 1788, and part of which land so patented became vested in C. W. Pool by deed from J. L. Ewing *et ux.*, by deed recorded in Westmoreland county aforesaid, in Deed Book 177, page 135, and being the same tract of land which the said C. W. Pool conveyed to Philip Semmer by deed dated the 16th day of June, A. D. 1890, and recorded in said county in Deed Book 184, page 410, and thereafter conveyed by said Philip Semmer to the party of the first part hereto by deed dated the 28th day of August, 1890, and recorded in said county in Deed Book 184, page 408.

"And also, all the right, title and interest of said party of the first part of, in and to and arising from a certain assignment made by

A. C. Boyd and Philip Semmer, as partners composing the firm of A. C. Boyd & Company, to it, the said party of the first part, bearing date August 30, A. D. 1890, wherein and whereby, for and in consideration of one dollar, A. C. Boyd and Company sold, assigned, transferred and set over unto said party of the first part
7 hereto, all their right, title and interest of, in and to certain contracts whereby the Irwin Natural Gas Company for certain valuable considerations contracted and obligated themselves to furnish natural gas in sufficient quantities for the successful operation of a plate-glass plant, having a capacity for three twenty-pot furnaces with the necessary annealing ovens and appliances, and all other uses necessary for the proper operation of said plant for and during the term of ten years from the 16th day of June, A. D. 1890, subject to the rules and regulations of said Irwin Natural Gas Company, the said plate-glass plant above referred being situate on the above-described premises of the party of the first part.

"And also, all of the right, title and interest of the party of the first part of, in and to and arising from a certain contract now held and owned by it through mesne assignments made between C. W. Pool and Philip Semmer, bearing date the 16th day of June, A. D. 1890, and wherein and whereby said C. W. Pool agreed for the sum of one dollar per annum to deliver at the property line of the premises as above set forth a sufficient quantity of water to supply all the needs of the plate-glass plant to be erected thereon, for a period of three years from the 16th day of June, A. D. 1890, subject to the rules and regulations of the Irwin Water Company; said plant referred to now being erected by party of the first part.

"And also, all and singular all the other property, real and personal or mixed, of every description whatsoever, belonging to or which may hereafter be acquired by said party of the first part, situate on or appurtenant to above-described premises.

"Together with all and singular the tenements, heredi-ments and appurtenances belonging to the said above-described premises, or thereunto in anywise appertaining, and the reversions, remainders, income, rents, issues and profits thereof, and also all the estate, right, title, interest, property, claim and demand whatsoever, as
8 well in law as in equity, of the said party of the first part, of, in and to the said premises and every part thereof, with the appurtenances.

"To have and to hold, all and singular, the premises and property, rights and franchises, whether real, or personal, or mixed, hereby conveyed, or intended so to be, with the appurtenances, unto the said The Farmers' Loan and Trust Company, the party of the second part, as trustee, and its successor or successors and assigns."

V. In and by the said mortgage or deed of trust it was among other things provided, that in case default should be made in the payment of any instalment of interest on any of the aforesaid bonds, according to their tenor, and of any coupons accompanying the same, or in the performance of any covenant, agreement or stipulation therein contained and thereby required to be kept and performed by the said mortgagor company, and if such default should continue

for the period of six months after demand made in writing by your orator upon the said mortgagor company for the payment of the said moneys or the performance of the said covenant, it should be lawful for your orator, or its successor or successors, to enter into or upon the premises thereby conveyed, and operate and manage the same, and collect and receive the income therefrom, and after deducting all the expenses of such operation and the payment of taxes, assessments, charges or liens prior to the lien of said mortgage, as well as a just compensation for its own services, to apply the moneys arising as aforesaid to the payment of the interest on the bonds thereby secured in the order in which the same should have become due, rateably; and if, after paying all such interest, any surplus should remain, such surplus and the property and premises aforesaid should be forthwith paid and surrendered to said mortgagor company, its successors or assigns.

VI. In and by the said mortgage or deed of trust it was also among other things provided, that in case default should be
9 made as aforesaid, or in case default should be made in the payment of the principal of any of said bonds, and in case such default should continue for a period of six months after demand made in writing by your orator for the payment of the said moneys, or the performance of the covenant or covenants, it should also be lawful for your orator, and upon receiving a written requisition signed by a majority in value of the bonds secured by said mortgage then outstanding, with proper indemnification against costs, compensation and expenses, it should be the duty of your orator, or its successor or successors, after entry as aforesaid, or other entry, or without entry, personally, or by its attorney or agent, to sell and dispose of all property thereby conveyed, as an entirety, or such part or parts of the same as should be necessary from time to time, at public auction, in the town of Irwin aforesaid, at such time or times as your orator might appoint, having first given notice of such sale as therein directed, and upon the making of such sale, and upon the receipt of the purchase price of the property sold, to make and deliver to the purchaser or purchasers a good and sufficient deed in the law conveying the same, and that such sale or sales should be a perpetual bar, at law and in equity, against the said mortgagor company and all other persons or corporations; and after deducting from the proceeds of such sale a just allowance for all disbursements and expenses of or incident to such sale, including attorneys' and counsel fees and all other expenses, advances or liabilities which should have been made or incurred by your orator in operating the said plate-glass works, or in managing its business while in possession, and all payments which should have been made by it for taxes or assessments and for charges or liens prior to the lien of the said mortgage upon the said premises or any part thereof, to apply the said proceeds to the payment of the principal and accrued interest of such of the bonds thereby secured as should then be outstanding and unpaid, whether or not the same should have become previously due, without discrimination, rateably, to
10 the persons or corporations which should then be the holders of said bonds and of the coupons representing such accrued

interest, to the aggregate amount of the said unpaid principal and accrued interest; and if, after the satisfaction of the principal and accrued interest of all the said bonds then outstanding and unpaid, a surplus of the said proceeds should remain, to pay over the same to the said mortgagor company, or to whomsoever should be lawfully or equitable entitled to receive the same, or as some court of competent jurisdiction should direct.

VII. In and by the said mortgage or deed of trust it was also among other things provided, that in case default should be made as aforesaid, and should continue as aforesaid, it should also be lawful, and it should be the duty of your orator, or its successor or successors in the trust, upon receiving a written requisition signed by the holders of one-third in value of the bonds thereby secured and then outstanding, after entry as aforesaid, or other entry, or, without entry, to commence and prosecute such actions, suits or proceedings at law or in equity as should be necessary to obtain the sale of the said premises by and under judicial authority, and to bar and foreclose the equity of redemption of the mortgagor company, its successors and assigns, and of all persons claiming under them or any of them in and to the said premises thereby conveyed or intended so to be, and every part and parcel thereof.

VIII. In and by the said mortgage or deed of trust it was also among other things provided, that in case default should be made in the payment of the semi-annual installments of interest of any of the said bonds, according to the tenor of the same and the coupons accompanying the same, and in case such default should continue for a period of six months after demand by your orator in writing for the payment of the said moneys, the principal of the bonds secured thereby and the said accrued interest should, at the election of your orator, become immediately collectible from
11 and out of the said mortgaged premises, anything in the said bonds or therein contained to the contrary notwithstanding; and that your orator might thereupon immediately proceed to cause the said premises to be subjected to the payment of the said debt, in like manner as thereinbefore provided.

IX. In and by the said mortgage or deed of trust it was also among other things provided, that your orator should only be responsible for reasonable diligence in the performance of the trust, and should not be answerable in any case for the act or default of any agent, attorney or employee selected with reasonable care and discretion; that your orator should be entitled to be reimbursed all proper outlays of every sort and description by it incurred in the discharge of its trust, and to receive a reasonable and proper compensation for any services that it might at any time perform in the discharge of the same; and that all such fees, commissions, compensation and disbursements should constitute a lien on the mortgaged property and premises.

X. The said mortgage or deed of trust was and is the proper act and deed of the mortgagor company, by it authorized, made and delivered in all respects in conformity with law; and the same was duly recorded in the office of the recorder of deeds of the county of

Westmoreland, in the State of Pennsylvania, in Mortgage Book No. 43, at page 1, etc., on January 12, 1891; and the same is a valid conveyance for the purposes therein stated. The trusts therein and thereby created were duly accepted by your orator before the recording of the said mortgage or deed of trust as aforesaid. Your orator attaches to this, its bill of complaint, as "Exhibit A," a copy of said mortgage, and referring thereto, prays that the same may be taken as part hereof.

XI. Under and by virtue of the provisions of said mortgage or deed of trust, your orator, being thereunto duly requested,
12 certified, in the form set forth therein, all of the bonds mentioned and described in the said mortgage or deed of trust, and to secure which the same was executed and delivered as aforesaid; and all of said bonds, aggregating the sum of two hundred and fifty thousand dollars of principal, are outstanding and existing obligations on the part of the mortgagor company.

XII. Default has been made by the mortgagor company in the payment on the first day of July, 1895, of the coupon interest due on that day on all the said bonds which have been issued and are outstanding as aforesaid, and all interest on all the said bonds from that day remains overdue and unpaid, including the interest due on that day as aforesaid. Demand in writing, in accordance with the terms of said mortgage, has been made of the mortgagor company and of the defendants The Penn Plate Glass Window Company and William L. Kann for the payment of the interest on some of the said bonds which fell due as aforesaid, and payment of the same has been refused, and such default has continued for a period of six months and more since such demand was made, and still continues. Default has also been made by the mortgagor company in the payment on the first day of January, 1896, of the coupon interest due on that day on all the said bonds which have been issued and are outstanding as aforesaid, and all interest on all the said bonds from that day remains overdue and unpaid, including the interest due on that day as aforesaid. Demand in writing, in accordance with the terms of said mortgage, has been duly made of the mortgagor company and of the defendants The Penn Plate Glass Company and William L. Kahn for the payment of some interest on some of the said bonds which fell due as aforesaid, and payment of the same has been refused. Default has also been made by the mortgagor company in the payment on the first day of July, 1896, of the coupon interest due on that day on all the said bonds
13 which have been issued and are outstanding as aforesaid, and all interest on all the said bonds from that day remains overdue and unpaid, including the interest due on that day as aforesaid. Demand has been duly made at the office of the Farmers' Loan and Trust Company, in accordance with the terms of said mortgage, for the payment of the interest on some of the said bonds which fell due as aforesaid, and payment of the same has been refused.

The said default in the payment of the semi-annual installments of interest of the first day of July, 1895, and the first day of Jan-

uary, 1896, have both continued for a period of six months and more after demand made by said trustee in writing for the payment of said moneys, and your orator has elected that the principal of the said bonds secured by said mortgage and the said accrued interest thereon shall be, and the same has become immediately collectible from and out of the said mortgaged premises.

XIII. The holders and owners of a very large number of said bonds have requested, in writing, your orator to commence this suit and to foreclose the said mortgage or deed of trust. The holders of the bonds secured by the said mortgage or deed of trust are numerous, and the names and residences of many of such holders are unknown to your orator, and your orator cannot make them parties hereto.

XIV. Your orator is informed and believes, and therefore alleges, that on or about the — day of ——, 189–, the defendant, the mortgagor company, conveyed all its property, real, personal and mixed, to the defendant, William L. Kann, and that thereafter the same was by the said William L. Kann conveyed to the defendant, The Penn Plate Glass Company. Said conveyances were made, however, subject to the mortgage above described and the bonds issued thereunder and secured thereby and the interest coupons thereto, which mortgage, bonds and coupons the defendants, the said William L. Kann and The Penn Plate Glass Company assumed and agreed to pay according to the tenor thereof.

14 XV. Your orator is informed and believes that the mortgagor company is insolvent, and wholly unable to pay its debts and obligations, and that the property and premises covered by the said mortgage or deed of trust so made to your orator as aforesaid, are and constitute very inadequate security for the payment of the amounts due on the said bonds, and that the said mortgaged property and premises are so situated that they cannot, nor can any part thereof, be sold in parcels without great injury to the interests of the beneficiaries under your orator's trust, namely, the holders of the bonds secured by the said mortgage or deed of trust so made to your orator as aforesaid.

XVI. By reason of the matters and things hereinbefore alleged, there is due to your orator, as trustee under the aforesaid mortgage or deed of trust, the amount of the principal sum secured by each and every of the said bonds that have been issued, together with the coupon interest which fell due thereon and on each of the said bonds on the first day of July, 1895, and also each and every instalment which has fallen due on each and all of the said bonds since that day, with interest on each instalment of the said coupon interest from the time when the same fell due as aforesaid.

No proceedings have been had, at law or in equity, for the collection of said mortgage debt, or any part thereof, save only this suit.

XVII. In consequence of the embarrassed condition of the financial affairs of the mortgagor company, and on account of the many difficulties which are manifest upon and from the allegations hereinbefore contained, involved in the execution of your orator's said

trust, it is impossible for your orator, as trustee under the said mortgage or deed of trust, to execute its said trust in the way and manner specified and provided in and by the said mortgage or deed of trust, without the aid or interposition of this honorable court in chancery sitting; nor can the said trust be executed,
15 as your orator is advised and charges, and the right of all the parties interested as ascertained and fully protected in the premises otherwise than by a judicial sale of the mortgaged premises, and of all the franchises, property, premises and appurtenances covered by the said mortgage or deed of trust. Until such sale can be had, and the proceeds thereof distributed, your orator is likewise advised and charges that it is expedient and necessary that the franchises, property, premises and appurtenances so mortgaged to your orator in trust as aforesaid, and all the rights, franchises and property of the mortgagor company, of whatever name, nature and description, including all its money on hand, and the earnings of the same, be placed in the hands and under the control of a receiver, to be appointed herein by this court, with such proper powers and control over the same as to the court shall seem right and equitable to be conferred.

In consideration whereof, and forasmuch as your orator is remediless in the premises by the rules of the common law, and can have adequate relief only in a court of equity, where matters of this nature are properly cognizable and relievable: to the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and that they may separately and severally answer make (but not under oath, their answer under oath being hereby expressly waived), according to the best of their knowledge, information and belief, to all the matters and charges aforesaid, and that as fully in every respect as if the same were here again repeated and they thereunto particularly interrogated; that your orator may be placed in possession of the mortgage premises personally, or that a receiver may be appointed in this cause of all and singular the rights, franchises and property, of every name and nature, of the said defendant, The Pennsylvania Plate Glass Company, with power and authority to operate said plate-glass works and carry on the business of said mortgagor com-
16 pany under the protection of this court, with all the usual powers and duties of receivers in such cases, and with authority to proceed to recover, by suit or otherwise, all property in the hands of other parties belonging to the said mortgagor company, and all moneys justly due to it and unlawfully withheld by any person on any pretense whatever; that an injunction may issue out of this court, restraining and enjoining the said mortgagor company and all and every its agents and servants, from in any way interfering with the possession or control of the property of said mortgagor company under the control of said receiver, and from selling, transferring, conveying, leasing, or otherwise disposing of or encumbering any of the property, rights or franchise of the said mortgagor company; that all the rights and franchise, and all the property, real and personal, of the said mortgagor company may be

declared subject to the lien of the said mortgage or deed of trust; that an account may be taken of the amounts due upon the bonds secured by the said mortgage or deed of trust and now outstanding, with interest thereon; that the amount so found due may be found to be the first lien on all the property of the said mortgagor company, and upon all the property heretofore conveyed, assigned or transferred by said mortgagor company as aforesaid, according to the terms of the said mortgage or deed of trust; that the said mortgagor company may be decreed to pay the amount so found to be due upon said bonds and the coupons thereto, for interest or principal or both; that in default thereof all the property and franchises of the said mortgagor company and all the property and franchises by said mortgagor company heretofore conveyed to said defendant W. L. Kann, or by said Kann conveyed to said defendant, The Penn Plate Glass Company, may be sold under a decree of this court and according to law and the practice of this court, to satisfy the amount so found due; that out of the proceeds of said sale, or the net earnings while in the hands of said receiver so to be ap-
17 pointed, there may be paid, first, the costs and expenses of your orator in this suit, including proper attorneys', solicitors' and counsel fees, with a proper compensation to your orator for its own services as trustee, to be allowed by the court, and that the residue thereof may be applied to the payment of the amount due upon the said mortgage bonds and the coupons thereto, with interest thereon; that if there be any surplus, it may be applied in such way as this court may direct; that all the defendants in this suit may be barred of and from any equity of redemption of and in the said property and premises; and that any deficiency on such sale may be entered in this cause as a judgment against the said mortgagor company; and that your orator may have such other and further relief in the premises as the circumstances of the case may require and as may be agreeable to equity; may it please your honors to grant unto your orator a writ of subpœna issuing out of and under the seal of this honorable court, directed to the defendants, The Pennsylvania Plate Glass Company, The Penn Plate Glass Company, W. L. Kann, to appear and answer this bill.

And your orator will ever pray, etc.

THE FARMERS' LOAN AND TRUST COMPANY,
By R. G. ROLSTON, *President.*

Attest: E. S. MARSTON, *Secretary.*

HERBERT L. FILULE, *Of Counsel.*
T——, McCLURE & ROLSTON,
Solicitors for Complainant.

UNITED STATES OF AMERICA, }
Southern District of New York, } ss:

Roswell G. Rolston, being duly sworn, deposes and says, that he is the president of The Farmers' Loan and Trust Company, the com-

plainant above named, and has been such president for a number of years past; that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he
18 believes it to be true; that the verification is not made by the complainant because it is a corporation; and that his knowledge is derived from having taken part in the transactions spoken of and from statements made to him, and from examination of the papers, and the same constitute his ground of belief; that the seal affixed to said bill of complaint is the corporate seal of said complainant, and was so affixed by his authority.

R. G. ROLSTON.

Sworn to before me this 6th day of July, 1896.

W. B. CARDOZO,

[SEAL.] *Notary Public, No.* 18, *New York County.*

EXHIBIT "A."

This indenture, made this first day of January, one thousand eight hundred and ninety-one, between the Pennsylvania Plate Glass Company, of Irwin, Westmoreland county, State of Pennsylvania, a corporation duly created and existing under the laws of the State of Pennsylvania, party of the first part, and the Farmers' Loan and Trust Company, a corporation created by and existing under the laws of the State of New York, located in the city of New York, party of the second part, witnesseth:

That whereas, said party of the first part, by its board of directors, have deemed it advisable to increase its indebtedness by the issue of bonds to the amount of two hundred and fifty thousand dollars, to be used towards the payment of liabilities incurred in the erection of a plate-glass works now being erected on land of the company as hereinafter set forth; and

Whereas, a majority of the stockholders of the said party of the first part have consented to such increase of indebtedness in the manner and form as provided by the statutes of the State of Pennsylvania; and

Whereas, the board of directors of said party of the first
19 part, at a regular session thereof, by a resolution duly ordained and passed, authorized and directed the president and secretary of said company to prepare and execute a series of bonds and accompanying mortgage in conformity with the consent of the stockholders of said company, and at the same time appointed a committee to superintend the issue of same and to decide on the form thereof and the trustee of said mortgage; and

Whereas, said committee have determined on the issue of a series of two hundred and fifty (250) bonds, of the denomination of one thousand dollars each, numbered from one to two hundred and fifty, consecutively, dated January 1, 1891, signed by the president and authenticated by the secretary of said party of the first part, with

the corporate seal attached thereto, and payable in gold coin of the United States of or equivalent to the present standard of weight and fineness, at the office of the Farmers' Loan and Trust Company, said company having been duly selected to act as trustee, the party of the second part, in the city of New York, ten years after date, with the coupons or interests warrants thereto attached, representing the interest to accrue thereon at the rate of six per cent. per annum, payable semi-annually on the first days of July and January in each year in gold coin, at said office of the party of the second part in the city of New York, upon the presentation and surrender of the coupons representing the several installments of interest as they respectively mature and by reference to the terms of the mortgage, to limit the remedy of the holder in case of default in the payment of principal or interest to the subjection of the property and premises to be conveyed to the payment thereof; and

Whereas, the bonds so proposed to be issued by the party of the first part, the coupons or interest warrants accompanying the same, and the trustee's certificate to be indorsed on said bonds, are substantially of the following form, that is to say:

20 (*Form of Bond.*)

UNITED STATES OF AMERICA, *State of Pennsylvania.*

No. —. $1,000. No. —.

Pennsylvania Plate Glass Company 6 % First-mortgage Gold Bond.

Know all men by these presents, that the Pennsylvania Plate Glass Company is indebted and hereby promises to pay to the Farmers' Loan and Trust Company of the City of New York or bearer, one thousand dollars in the gold coin of the United States of America of or equivalent to the present standard of weight and fineness, at the office of said Farmers' Loan and Trust Company of New York City on the first day of January, one thousand nine hundred and one, with interest from the first day of January, one thousand eight hundred and ninety-one, at the rate of six per centum per annum, payable semi-annually in like gold coin, at the office of said Farmers' Loan and Trust Company, in the city of New York, on the first days of July and January, in each year, on the presentation and surrender of the annexed coupons as they severally mature.

In the case of default in the payment of the principal or any of the said interest in accordance with the tenor hereof, the said principal and interest may become collectible in the manner and with the effect specified and set forth in the deed of trust or mortgage hereinafter mentioned.

This bond is one of the series of two hundred and fifty bonds of like amount, tenor and date, amounting in the aggregate to the sum of two hundred and fifty thousand dollars, and numbered from one to two hundred and fifty consecutively, the payment of the whole series of bonds, with the interest thereof, being equally secured by a

certain deed of trust or mortgage, bearing even date here-
21 with, conveying the property and franchises of the company, more particularly described therein, unto the Farmers' Loan and Trust Company, to which reference is hereby made, for the terms and conditions upon which this bond is issued and for the rights and remedies of the holder hereof.

This bond shall not become obligatory until it shall have been authenticated by the certificate of the Farmers' Loan and Trust Company endorsed hereon.

In witness whereof, the Pennsylvania Plate Glass Company has caused its corporate seal to be hereto affixed and the same to be signed by its president and attested by its secretary, this first day of January, A. D. 1891.

PENNSYLVANIA PLATE GLASS COMPANY,
By —— ——, *President.*

Attest: —— ——, *Secretary.*

(*Coupon.*)

Pennsylvania Plate Glass Company will pay the bearer hereof on the first day of —— thirty dollars in gold coin, at the office of the Farmers' Loan and Trust Company in New York city, being for six months' interest on its bond No. —.

—— ——, *Treasurer.*

The Farmers' Loan and Trust Company hereby certifies that this bond is one of the series referred to and secured in the within-mentioned mortgage or deed of trust.

THE FARMERS' LOAN AND TRUST COMPANY,
By —— ——, *Vice-President.*

Now therefore, this indenture witnesseth: That the said party of the first part, for and in consideration of the sum of one dollar to it paid, the receipt whereof is hereby acknowledged, and in order to better secure the payment of the principal and interest of said bonds
as the same shall become due and payable, according to the
22 tenor and effect of said bonds and of the coupons or interest warrants, accompanying the same, hath granted, bargained and sold and by these presents doth grant, bargain, sell, release, convey and confirm unto said party of the second part hereto, and unto its successor or successors and assigns forever, all that certain tract of land, with the buildings and improvements thereon, situate in North Huntington township, county of Westmoreland and State of Pennsylvania, bounded and described as follows: Beginning at a post on the northwest corner of Fourth street and Broadway avenue, in the town of North Irwin; thence by line of said Fourth street north 1 degree 18 minutes east, nine hundred and fifteen (915) feet to a post, thence by land of C. W. Pool north 88 degrees 42 minutes west, five hundred and eighty-six (586) feet to a post; thence by

same north 65 degrees 50 minutes west, four hundred and two feet and six inches (402 ft. 6 in.) to a post; thence by same south 2 degrees 67 minutes east, four hundred and seventy-six (476) feet to a public road and line of Swigger's heirs; thence by same south 65 degrees 50 minutes east, one hundred and fifteen (115) feet to a post; thence by same south 23 degrees 10 minutes west, five hundred and twenty-seven (527) feet to a post on line of Broadway avenue; thence by said avenue south 49 degrees 42 minutes east, one hundred and three feet to a post; thence by said avenue south 88 degrees 42 minutes east, nine hundred and thirty-one (931) feet to a post at Fourth street, the place of beginning, containing twenty-one (21) acres, more or less.

Being a part of a tract of land called "Fruit Hill," for which a patent was issued by the Commonwealth of Pennsylvania to William Elliott, dated 2d May, 1788, and part of which land so patented became vested in C. W. Pool by deed from J. L. Ewing *et ux.*, by deed recorded in Westmoreland county aforesaid, in Deed Book 177, page 135, and being the same tract of land which the said C. W. Pool conveyed to Philip Semmer by deed dated the 16th day
23 of June, A. D. 1890, and recorded in said county in Deed Book 184, page 410, and thereafter conveyed by said Phillip Semmer to the party of the first part hereto by deed dated the 28th day of August, 1890, and recorded in said county in Deed Book 184, page 408.

And also all the right, title and interest of said party of the first part of, in and to and arising from a certain assignment made by A. C. Boyd and Phillip Semmer, as partners composing the firm of A. C. Boyd and Company, to it, the said party of the first part, bearing date August 30, A. D. 1890, wherein and whereby, for and in consideration of one dollar, said A. C. Boyd and Company sold, assigned, transferred and set over unto said party of the first part hereto, all their right, title and interest of, in and to certain contracts whereby the Irwin Natural Gas Company for certain valuable considerations contracted and obligated themselves to furnish natural gas in sufficient quantities for the successful operation of a plate-glass plant, having a capacity of three twenty-pot furnaces with the necessary annealing ovens and appliances, and all other uses necessary for the proper operation of said plant for and during the term of ten years from the 16th day of June, A. D. 1890, subject to the rules and regulations of said Irwin Natural Gas Company, the said plate-glass plant above referred to being situate on the above-described premises of the party of the first part.

And also all of the right, title and interest of the party of the first part of, in and to and arising from a certain contract now held and owned by it through mesne assignments made between C. W. Pool and Phillip Semmer, bearing date the 16th day of June, A. D. 1890, wherein and whereby said C. W. Pool agreed for the sum of one dollar per annum to deliver at the property line of the premises as above set forth, a sufficient quantity of water to supply all the needs of the plate-glass plant to be erected thereon, for a period of three years from

the 16th day of June, A. D. 1890, subject to the rules and
24 regulations of the Irwin Water Company. Said plant referred to now being erected by party of the first part.

And also all and singular all the other property, real and personal or mixed, of every description whatsoever, belonging to or which may hereafter be acquired by said party of the first part, situate on or appurtenant to above-described premises.

Together with all and singular the tenements, hereditaments and appurtenances belonging to the said above-described premises, or thereunto in anywise appertaining, and the reversions, remainders, income, rents, issues and profits thereof, and also, all the estate, right, title, interest, property, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, and to the said premises and every part thereof with the appurtenances.

To have and to hold, all and singular, the premises and property, rights and franchises, whether real, or personal, or mixed, hereby conveyed, or intended so to be, with the appurtenances, unto the said The Farmers' Loan and Trust Company, the party of the second part, as trustee, and its successor, or successors and assigns.

In trust nevertheless, for the equal and *pro rata* benefit and security of the several persons or corporations who may be or become holders of any of the bonds hereby secured, without any preference or priority of one bond over another or others, by reason of priority in the time of issue or negotiation thereof, or otherwise, and for the uses and purposes, and upon and under the terms and stipulations hereinafter expressed and contained, that is to say:

ARTICLE FIRST. Until default shall be made by the party of the first part in the payment of the principal or interest of the said bonds thereby secured, or some of them, or in the performance of some one or more of the covenants, stipulations or agreements herein required by it to be kept, performed or done, the said
25 party of the first part shall be suffered and permitted to possess, manage, operate and enjoy the said hereinbefore mentioned and described plate-glass works and premises, with the appurtenances, and to take and use the incomes, rents, issues and profits thereof, and to dispose of the same in any manner not inconsistent with these presents; and the party of the first part shall also have the right, from time to time, in its discretion, to dispose of such portion or portions of the plant, machinery, implements, furniture and fixtures at any time, held or acquired for use in connection with the said plate-glass works, as may become unfit for use, replacing the same by new, which shall become subject to the operation of these presents.

ARTICLE SECOND. In case default shall be made in the payment of any installment of interest on any of the aforesaid bonds, according to the tenor of the said bonds, and of any of the coupons accompanying the same, or in the performance of any covenant, agreement or stipulation herein contained, and hereby required to be kept and performed by the said party of the first part, and if such default should continue for the period of six months after demand, made in writing by the said trustees upon the said party of the first

part, for the payment of the said moneys, or the performance of the said covenants, it shall be lawful for the said trustee, the party of the second part, or its successor or successors, personally, or by its attorneys or agents, to enter into or upon all and singular, the premises hereby conveyed, or intended so to be, and each and every part thereof, and wholly to evade the said party of the first part, its agents and servants therefrom, and to have, hold and use the same, operating by its managers, superintendents, receivers, servants or other attorneys or agents, the said plate glass company and appurtenances, conducting the business thereof, and enjoying the franchises pertaining thereto, making from time to time all such repairs and replacements, and such useful alterations, additions and improvements, as may seem to be necessary and judicious to carry
26 on the business of said party of the first part and to collect and receive all incomes, rents, issues and profits of the same and every part thereof, and after deducting all the expenses of operating and of conducting the business thereof, and of all the said repairs, replacements, alterations, additions and improvements, and all payments which may be made for taxes, assessments, charges or liens, prior to the lien of these presents, upon the said premises or any part thereof, as well as a just compensation for its own services, to apply the moneys arising as aforesaid to the payment of the interest on the bonds hereby secured, in the order in which the same shall have become due, ratably, to the person and corporations, who shall be the holders of the coupons representing such interests, and if after paying all interest, which shall have become due, a surplus shall remain, such surplus, and the property and premises hereby conveyed, shall be forthwith paid and surrendered to the said party of the first part, its successors or assigns, and the said mortgage premises shall be thereafter possessed and held by the said party of the first part, its successors and assigns, subject to the lien of this mortgage, and to the right of the said trustee to take possession, in case of other default, in like manner, and with the like effect, as hereinbefore specified and provided.

ARTICLE THIRD. In case default shall be made, as aforesaid, or in case default shall be made in payment of the principal of any of the said bonds, or any part thereof, and in case such default shall continue for the period of six months after demand, made in writing, by the said trustee, for the payment of the said moneys, or the performance of the covenant or covenants, it shall be also lawful for the said trustee, and upon receiving a written requisition, signed by a majority in value of the bonds secured hereby, then outstanding, with proper indemnification against costs, compensation and expenses, it shall be the duty of the said trustee, or its successor
27 or successors, after entry as aforesaid, or other entry, or without entry, personally, or by its attorney or agent, to sell and dispose of all and singular the premises, franchises and contracts hereby conveyed and assigned or intended so to be, as an entirety, or such part or parts of the same as shall be necessary, from time to time, at public auction, in the town of Irwin aforesaid, at such time or times as the trustee may appoint, having first given notice of the

time and place of such sale by advertisement containing a brief general description of the property to be sold, to be published at least once a week for four consecutive weeks in one newspaper published in the city of New York, in the State of New York, in one newspaper published in the town of Irwin, in the State of Pennsylvania, and one newspaper published in the city of Pittsburg, in the State of Pennsylvania; to adjourn such sale from time to time in its discretion, and after such adjournment or adjournments to make the sale at the time and place to which the same shall be so adjourned; and at and upon the making of such sale, and upon the receipt of the purchase price of the property sold, to make and deliver to the purchaser or purchasers, a good and sufficient deed in the law conveying the same.

Such sale or sales so to be made, shall be a perpetual bar both at law and in equity against the party of the first part, and all other persons or corporations lawfully claiming or to claim the premises so sold, or any part or parcel thereof by, through, from or under it; and after deducting from the proceeds of any such sale a just allowance for all disbursements and expenses of or incident to such sale, including attorneys' and counsel fees, and all other expenses, advances or liabilities which have been made or incurred by the said trustee, in operating or maintaining the said plate-glass works, or in managing its business while in possession, and all payments which shall have been made by it for taxes or assessments, or for charges or liens prior to the lien of these presents, upon the said premises or any part thereof, to apply the said proceeds to
28 the payment of the principal and accrued interest of such of the bonds hereby secured, as shall then be outstanding, and unpaid, whether or not the same shall have become previously due, without discrimination, ratably, to the persons or corporations who shall then be the holders of said bonds, and of the coupons representing such accrued interest to the aggregate amount of the said unpaid principal and accrued interest; and if, after the satisfaction of the principal and accrued interest of all of the said bonds then outstanding and unpaid, a surplus of the said proceeds shall remain, to pay over the same to the said party of the first part, or to whomsoever shall be lawfully or equitably entitled to receive the same, or as some court of competent jurisdiction shall direct.

And it is hereby declared that the receipt or receipts of the said trustee shall be a sufficient discharge to the purchaser or purchasers, at such sale, for the purchase-money, and that neither such purchaser or purchasers, nor his or their heirs, executors, administrators or assigns, shall be liable after the payment thereof to the trustee, and being in possession of such receipt or receipts therefor for the due application of said purchase-money, or any part thereof, nor shall they or any of them be in any manner whatsoever answerable for any loss, misapplication or non-application of such purchase-money, or any part thereof, nor be in any manner obliged to enquire into the necessity, expediency or authority of or for such sale.

And in case default shall be made as aforesaid and shall continue as aforesaid, it shall also be lawful, and it shall be the duty of the

said trustee, and its successor or successors in the said trust, upon receiving a written requisition, signed by the holders of one-third in value of the bonds hereby secured and then outstanding, after entry as aforesaid, or other entry, or without entry, to commence and prosecute such actions, suits or proceedings at law, or in equity, as shall be necessary to obtain the sale of the said premises, by and under judicial authority, and to bar and foreclose the equity
29 of redemption of the said party of the first part, its successors and assigns, and of all persons claiming under them, or any of them, and the said premises hereby conveyed or intended so to be, with the appurtenances, and every part and parcel thereof.

ARTICLE FOURTH. At any sale of the aforesaid property, or any part thereof, whether made by virtue of the power of sale hereby granted to the said trustee, or any other power of sale heretofore or hereafter granted or given by the said party of the first part, or by or under any judicial proceedings whatsoever, the said trustee, or any committee of bondholders chosen and appointed for that purpose, if requested so to do, by the majority in value of the said issue of the bonds then outstanding and unpaid, may bid for and purchase, or cause to be purchased, the property so sold, or any part thereof, on behalf of all the holders of the bonds hereby secured, and then outstanding and unpaid, in the proportion of the respective interests of such bondholders, at a reasonable price, if but a portion of the property be sold, or if it all be sold at a price not exceeding the whole amount of such prior liens and incumbrances as may then stand charged upon and against said premises, together with the amount of the principal of such bonds then outstanding and unpaid interest thereon, and the costs and expenses of the sale, and of the suit under which such sale shall be made, and in that case the said trustee, or the said committee of bondholders, as the case may be, after purchasing and acquiring the title to the said property of the party of the first part and premises at and under such sale, shall reconvey the said property and appurtenances and franchises to such new company, and at such time, and upon and under such terms and provisions as may be agreed upon and fixed in writing, by a majority in value of the holders of the principal of the bonds secured hereby, and then outstanding and unpaid.

It being expressly understood and agreed by and between
30 the parties hereto, and by and between the said party of the first part and the respective holders of the said several bonds, collectively, that no other suit or proceeding for the collection of any part of the principal or interest represented by the said bonds and coupons, shall ever be commenced or prosecuted, either against the party of the first part, or any of its officers, directors or shareholders, either by the said holders of the said bonds or coupons or any of them, or by any person or corporation to whom the same or any of them may be assigned or transferred, except such suits or proceedings as shall be necessary to recover the possession of the said premises hereby conveyed or to subject the same to the payment of the said debts, and that the sale of the said mortgaged premises, whether under the power of the sale hereby granted, or any other power of

sale, or by or under any judicial proceedings whatsoever, shall operate as a full and complete satisfaction and discharge of the indebtedness of the said party of the first part, upon the said bonds and the coupons accompanying the same, and of the obligation of the covenants herein contained, whether the said premises shall be bidden in for the whole amount of the said indebtedness or for a less price, anything in the said bonds and coupons or therein contained, to the contrary thereof notwithstanding.

ARTICLE FIFTH. In case default shall be made in the payment of the semi-annual installments of interest of any of the said bonds, according to the tenor of the said bonds and the coupons accompanying the same, and in case any such default shall continue for a period of six months after demand by said trustee, in writing, for the payment of the said money, the principal of the bonds secured hereby, and the said accrued interest shall, at the election of the said trustee, become immediately collectible from and out of the said mortgaged premises, anything in the said bonds or herein contained to the contrary notwithstanding, and the said trustee may
31 thereupon immediately proceed to cause the said premises to be subjected to the payment of the said debt in like manner as hereinbefore provided.

But a majority in interest of the holders of the principal of said bonds then outstanding and unpaid may, in writing instruct the said trustee to declare the said principal and interest to be so collectible without demand for payment at, upon or after the default, as aforesaid, of the party of the first part to pay the said interest, or any part thereof; or such majority in the interest of the holders of the said bonds may waive the right so to declare on such terms and under such conditions as such majority may deem proper or may annul or reverse such election by the trustee; provided, however, that no such action of the trustee or the holders of the said bonds, shall extend to, or to be taken to affect any subsequent default, or to impair any of the rights or powers hereinbefore mentioned resulting therefrom.

ARTICLE SIXTH. The said party of the first part shall, from time to time, and at all times hereafter, and as often as thereunto requested by the trustee or its successors, execute, acknowledge and deliver all such further deeds and assurances in the law, for the better assuring *such* the said trustee and its successor or successors, in the trust hereby created, upon the trusts herein expressed, the premises, franchises and appurtenances hereinbefore mentioned and conveyed, or intended so to be, and all other property and thing-whatsoever appurtenant thereto, whether now acquired and held, or hereafter to be acquired, as by such trustee, its successor or successors, or their counsel learned in the law, shall be reasonably advised, *are* required.

ARTICLE SEVENTH. The said trustee and its successors shall have full power in their discretion, upon the written request of the said party of the first part, or its successors to convey by way of release or otherwise to the person or persons designated by the party
32 of the first part, or its successors, or to reconvey to the said party of the first part, its successors and assigns, any lands

acquired in any way or held for the purpose of the business of the party of the first part, or the uses connected therewith in connection with its said business, upon security satisfactory to the trustee for the protection of its *cestui que trust.*

ARTICLE EIGHTH. And it is further agreed that whenever and as often as any contingency shall arise in which a meeting of the holders of the bonds hereby secured shall be necessary or expedient, it shall be the duty of the trustee or of the president of the party of the first part, on the written request of the holders of not less than one-fifth in amount of the principal of the bonds then outstanding, stating therein the object of such meeting, to call a meeting of the holding of the then outstanding bonds secured hereby, to be held at some convenient place in the town of Irwin, Pennsylvania, by advertisement in at least two newspapers published in said city of New York, the town of Irwin and the city of Pittsburg, Pennsylvania, such advertisement to be published daily in such newspapers for at least ten successive days immediately preceding the time named for such meeting. In case of the default of such trustee and of the said president to call such meeting, it shall be competent for the holders of one-fifth in amount of the bonds then outstanding to call a meeting in the manner aforesaid; and at any such meeting so called the holders of said bonds may attend in person or by proxy, and it shall be competent for a majority of them to exercise all the powers and privileges conferred upon the bondholders by these presents, or which may otherwise be lawfully exercised or enjoyed by them, provided that the holders of a majority in amount of the principal of the then outstanding bonds, attending either in person or by proxy, shall be necessary to constitute a quorum at such meeting, and that any vote of such meeting effecting or intending to effect any person or corporation, including the parties hereto, or their successors, may by any person or
33 corporation so to be affected, be required to be authenticated by the signatures of the persons so voting.

It is further agreed that in case of the resignation, incapacity or removal of the trustee, a successor or successors may be appointed by the holders of a majority in amount of the principal of the bonds secured hereby, then outstanding, by an instrument in writing signed by them, or by the vote of any meeting called and held as hereinbefore provided, and in case such majority in amount of the holders of the said bonds do not agree upon the appointment of a new trustee, or trustees, then the party of the first part hereto is hereby authorized and empowered to apply, or if it shall neglect or refuse so to do for the period of thirty days after any vacancy shall occur, then the holders of any of the said bonds then outstanding, to the amount of fifty thousand dollars, may, on notice to the party of the first part, or its successors, apply to any court of record, of competent jurisdiction, for the appointment of a new trustee or trustees; and the trustee or trustees so appointed or elected, under any of the provisions hereof, shall, on his or their acceptance of such appointment or election, thereby become invested with all the estate, rights and powers as trustee or trustees hereunder, and shall per-

form the same duties as he or they would have held, possessed or been invested with, or bound or obliged to perform, had he or they been made the party or parties of the second part hereto.

It is further agreed that in case any vacancy shall occur by reason of the resignation, removal, disability, neglect or refusal to act, of the said parties of the second part or either of them, at and upon the happening of such vacancy, and until the appointment of a new trustee or trustees in pursuance of the provisions hereof, C. W. Pool, Esquire, of the State of Pennsylvania, is hereby appointed and shall become the trustee hereunder, and the premises hereby conveyed and the estate hereby granted shall thereupon immediately
34 vest in him, the said C. W. Pool, Esquire, and his successors in the said trust, in the place and stead of the trustee or trustees in respect to whom such vacancy shall exist, with the like effect and with the like powers and duties, to all intents and purposes, as if the said premises had been conveyed to him by these presents.

ARTICLE NINTH. If the said party of the first part shall well and truly pay the principal of the said bonds and every of them, and the interest to accrue thereon, according to the tenor and effect of the said bonds, and of the several coupons accompanying the same, and shall well and truly observe, perform and keep, all and singular, the several covenants, agreements and stipulations herein provided on its part to be observed, performed and kept, according to the true intent and meaning of these presents, then, and in that case, all the estate, right, title and interest of the said party of the second part, its successor or successors, in the trust hereby created, shall cease, determine and become void; otherwise the same shall be and remain in full force and virtue; and at and upon the payment of the said bonds hereby secured and the interest thereon, this indenture shall be discharged by the said parties of the second part, or their successor or successors, by appropriate instrument or instruments, under seal, duly executed and acknowledged.

ARTICLE TENTH. The right of action under this indenture is vested exclusively in the trustee, and under no circumstances shall any bondholder or bondholders have any right to institute an action or other proceeding on or under this indenture, for the purpose of enforcing any remedy herein and hereby provided, or of foreclosing this mortgage, except in case of refusal on the part of the trustee to perform any duty imposed on it by this agreement; and all actions and proceedings for the purpose of enforcing the provisions of this indenture shall be instituted and conducted by the trustee, according to its sound discretion; but the trustee shall be under no obligation to institute any such suit, or to take any proceedings under this indenture or to enter any
35 appearances or in any way defend in any suit in which it may be made defendant, or to do anything whatever as trustee, until it shall be indemnified to its satisfaction from any and all costs and expenses, outlays and counsel fees and other reasonable disbursements, and from all possible claims for damages, for which it may become liable or responsible on proceeding to carry out such

request or demand. The trustee may nevertheless begin suit, or appear in and defend suit, or do anything else in its judgment proper to be done by it as such trustee, without such indemnity, and in such case it shall be compensated therefor from the trust fund.

The trustee shall be under no obligation to recognize any person as holder or owner of any bonds secured hereby, or to do or refrain from doing any act pursuant to the request or demand of any person, until such supposed holder or owner shall produce said bonds and deposit the same with the trustee.

It shall be no part of the duty of the party of the second part to file or record this indenture as a mortgage or conveyance of real estate, or as a chattel mortgage, or to renew such mortgage, or to procure any further, other or additional instrument of further assurance, or to do any other act which may be suitable and proper to be done for the continuance of the lien hereof, or for giving notice of the existence of such lien, or for extending or supplementing the same; nor shall it be any part of its duty to effect insurance against fire or other damage on any portion of the mortgaged property, or to renew any policies of insurance, or to keep itself informed or advised as to the payment of any taxes or assessments, or to require such payment to be made; but the trustee may, in its discretion, do any or all of the matters and things in this paragraph set forth, or require the same to be done. It shall only be responsible for
36 reasonable diligence in the performance of the trust and shall not be answerable in any case for the act or default of any agent, attorney or employee selected with reasonable discretion; it shall be entitled to be reimbursed for all proper outlays of every sort or nature by it incurred in the discharge of its trust, and to receive a reasonable and proper compensation for any services that it may at any time perform in the discharge of the same; and all such fees, commissions, compensation and disbursements shall constitute a lien on the mortgaged property and premises.

In case at any time it shall be necessary and proper for the trustee to make any investigation respecting any facts preparatory to taking or not taking any action, or doing or not doing anything as such trustee, the certificate of the party of the first part, under its corporate seal, attested by the signature of its president, and the affidavit of one or more directors, shall be conclusive evidence of such fact to protect the trustee in any action that it may take by reason of the supposed existence of such fact.

All recitals, statements of fact and representations herein contained are made on behalf of the party of the first part, and the party of the second part assumes no responsibility as to the correctness of the same; nor is the party of the second part to be understood as making any representations as to the character, extent or value of the above-described property, or as to the title thereto.

ARTICLE ELEVENTH. The said party of the second part doth hereby accept the trust hereby created.

In witness whereof, the said party of the first part, pursuant to a resolution of its board of directors, hath caused this instrument to be signed by its president and attested by its secretary, and its cor-

porate seal hereunto affixed, and the said The Farmers' Loan
37 and Trust Company, under the direction and authority of its board of directors, hath caused this instrument to be signed by its president and attested by its secretary and its corporate seal hereunto affixed.

PENNSYLVANIA PLATE GLASS COMPANY,
By C. W. POOL, *President.*

Attest: A. LIVINGSTON NORMAN, [SEAL.]
Secretary.

THE FARMERS' LOAN AND TRUST COMPANY,
By R. G. ROLSTON, *President.*
Attest: E. S. MARSTON, *Secretary.* [SEAL.]

Sealed and delivered in presence of—as to Pennsylvania Plate Glass Company—
S. E. POOL.

Witness as to the Farmers' Loan and Trust Company:
W. B. CORDOZO.

STATE OF ——, }
County of ——, } *ss:*

Be it remembered, that on this — day of ——, anno Domini eighteen hundred and ninety —, before me, a notary public, in and for the said county and State, duly commissioned and qualified, came C. W. Pool, the president of the Pennsylvania Plate Glass Company, and A. Livingston Norman, the secretary of said company, to me personally known to be the persons whose names are subscribed to the foregoing instrument, as the president and secretary of the said company, and severally acknowledged the same as and for the voluntary act and deed of the said Pennsylvania
38 Plate Glass Company, by them severally, voluntarily done and executed for the purposes therein set forth.

And the said A. Livingston Norman being by me duly sworn, did depose and say, that he resides in the county of New York and State of New York, that he is the secretary of the said Pennsylvania Plate Glass Company, that the seal affixed to the foregoing instrument as the seal of said company is the corporate seal thereof; that it was affixed by the order of the board of directors of the said company, and that he signed his name thereto by the like order of the said board.

And the said A. Livingston Norman did then and there further depose and say, under his oath aforesaid, that he is acquainted with the said C. W. Pool and knows him to be the president of the said company; that the signature of the said C. W. Pool subscribed to the said instrument, is the genuine handwriting of him, the said C. W. Pool, and was thereunto subscribed by the like order of the said board of directors, and in the presence of him, the said A. Livingston Norman.

In testimony whereof, I have hereunto set my hand and notarial seal at the county and State aforesaid, the day and year above written.

——— ———,
Notary Public.

STATE OF NEW YORK, }
City and County of New York, } ss:

Be it remembered, that on this — day of ———, in the year one thousand eight hundred and ninety —, before me, the undersigned, — commissioner, resident of the city of ———, duly commissioned and qualified by the executive authority, under the laws of the State of Pennsylvania, to take acknowledgments of deeds, etc., to be used or recorded therein, personally appeared ——— ———, the — of the Farmers' Loan and Trust Company and ——— ———, the secre-
39 tary of said company, to me personally known to be the persons whose names are subscribed to the annexed instrument, as the — and secretary of said company, and severally acknowledged the same, as the free and voluntary act and deed of said The Farmers' Loan and Trust Company, by them severally and voluntarily done and executed, for the purpose therein set forth. And said ——— ——— being by me duly sworn, did depose and say that he resides in the city of ———.

That he is secretary of the Farmers' Loan and Trust Company. That the seal affixed to the foregoing instrument as the seal of said company is the corporate seal thereof. That it was affixed by the order of the board of directors of said company, and that he signed his name thereto by like order of said board.

And the said ——— ——— did then and there further depose and say, under his oath aforesaid, that he is acquainted with said ——— ——— and knows him to be the — of said company. That the signature of the said ——— ——— subscribed to said instrument, is the genuine handwriting of him, the said ——— ———, and was thereunder subscribed by the like order of said board of directors, and in presence of him the said ——— ———.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year last aforesaid.

——— ———,
Commissioner for the State of Pennsylvania.

40 *Chancery Subpœna.*

UNITED STATES OF AMERICA, }
Western District of Pennsylvania, } ss:

The United States of America to the Pennsylvania Plate Glass Company, a corporation and citizen of the State of Pennsylvania; the Penn Plate Glass Company, a corporation and citizen of the State of Pennsylvania, and William L. Kann, a citizen of the State of Pennsylvania, Greeting:

We command you and every of you, that you appear before our judges of our circuit court of the United States of America for the

western district of Pennsylvania, at the city of Pittsburg, in said district, on the first Monday of August next to answer the bill of complaint of the Farmers' Loan and Trust Company, a corporation and citizen of the State of New York filed in the clerk's office of said court, in the city of Pittsburg, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default. And this you are in nowise to omit, under such penalties as are inflicted by the laws of the United States.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at the city of Pittsburg, aforesaid, this eighth day of July, in the year of our Lord one thousand eight hundred and ninety-six and of our Independence the 121st.

[SEAL.] H. D. GAMBLE, *Clerk.*

Served July 8, 1896, on the Pennsylvania Plate Glass Company by giving a true and attested copy hereof to Philip Semmer, president of said defendant company at his office in the city of Pittsburg. Also served on said defendant at same time notice of hearing of motion for preliminary injunction by giving a copy of order to its said president; same day served within writ and like notice
41 on the within-named Penn Plate Glass Company by giving copy duly attested of writ to William L. Kann, president of said defendant company at its office in the city of Pittsburg and giving him also a copy of said order and notice; and same day served within writ and said order and notice on William L. Kann, by giving him a true and attested copy of said writ and copy of said order at his office in the city of Pittsburg.

So answers—

JOHN W. WALKER,
U. S. Marshal,
Per A. W. GREGORY, *Deputy.*

MEMORANDUM.—The above-named defendants are required to enter an appearance in the above-entitled cause, on or before the first Monday of the month ensuing twenty days after the service of this writ, otherwise the complaint may be taken against them as confessed, and a decree entered accordingly.

H. D. GAMBLE, *Clerk.*

Order Extending Time.

And now Sept. 7th, 1896, on motion of complainant's solicitor, the time for filing answer, plea or demurrer is extended for one week.

BY THE COURT.

Demurrer of Penn Plate Glass Company.

This defendant, The Penn Plate Glass Company, by protestation, not confessing any or all of the things in the plaintiff's bill of complaint, contained, to be true in such manner and form as the same

is therein set forth and alleged, doth demur to so much of the said bill as is not answered, and for cause of demurrer showeth:

1. That the said bill doth not contain any matter or equity wherein this court can ground any decree, or give to the plaintiff any relief against this defendant.

42 2. And for a further cause of demurrer, this defendant protesting as aforesaid, alleges that the said plaintiff does not disclose a written request to the said plaintiff, as trustee, to commence this suit, and to foreclose the said mortgage or deed of trust, referred to in the said bill, and fails to aver that one-third of the holders of the bonds secured by the said mortgage or deed of trust, requested the plaintiff in writing to commence said suit to foreclose the said mortgage or deed of trust.

3. And for further cause of demurrer the said defendant further protesting, shows that the plaintiff has an adequate remedy at law, by proceedings for the foreclosure of the said described mortgage by *scire facias*.

4. That the mortgage sued upon by the plaintiff in this cause, discloses that there was no individual liability on the bonds secured by the said mortgage for the payment of the same by the Pennsylvania Plate Glass Company, and that therefore so much of the relief as prays for a decree for the amount of the aggregate of said bonds, which the property secured by the said mortgage would be insufficient to pay, is not warranted by the said mortgage.

5. That the said bill and the mortgage sued upon, made a part of the said bill, does not disclose any individual liability by this demurrant, for the debt mentioned in said bonds, for or by reason of its purchase and ownership of the plant and property of the Pennsylvania Plate Glass Company.

6. That the said bill is multifarious in including this demurrant as a codefendant in the said bill.

S. SCHOYER, JR.,
Att'y for Demurrant.

S. Schoyer, Jr., counsel for the demurrant, says that in his opinion the grounds for the demurrer above assigned are well founded in law, and that the same is not interposed for delay.

S. SCHOYER, JR.

43 *Demurrer of W. L. Kann.*

This defendant, W. L. Kann, by protestation, not confessing any or all of the things in the plaintiff's bill of complaint contained to be true in such manner and form as the same is therein set forth and alleged, doth demur to so much of the said bill as is not answered, and for cause of demurrer showeth:

1. That the said bill doth not contain any matter or equity wherein this court can ground any decree, or give to the plaintiff any relief against this defendant.

2. And for a further cause of demurrer, this defendant, protesting as aforesaid, alleges that the said plaintiff does not disclose a written

request to the said plaintiff, as trustee, to commence this suit, and to foreclose the said mortgage or deed of trust, referred to in the said bill, and fails to aver that one-third of the holders of the bonds secured by the said mortgage or deed of trust, requested the plaintiff in writing to commence said suit to foreclose the said mortgage or deed of trust.

3. And for further cause of demurrer the said defendant, further protesting, shows that the plaintiff has an adequate remedy at law, by proceedings for the foreclosure of the said described mortgage by *scire facias*.

4. That the mortgage sued upon by the plaintiff in this cause, discloses that there was no individual liability on the bonds secured by the said mortgage for the payment of the same by the Pennsylvania Plate Glass Company, and that therefore so much of the relief as prays for a decree for the amount of the aggregate of said bonds, which the property secured by the said mortgage would be insufficient to pay, is not warranted by the said mortgage.

5. That the said bill and mortgage sued upon, made a part of the said bill, does not disclose any individual liability by this demurrant, for the debt mentioned in said bonds, for or by reason
44 of his purchase and ownership of the plant and property of the Pennsylvania Plate Glass Company.

6. That the said bill is multifarious in including this demurrant as a codefendant in the said bill.

S. SCHOYER, JR.,
Att'y for Demurrant.

S. Schoyer, Jr., counsel for demurrant, says that in his opinion the ground- for the demurrer above assigned, are well founded in law, and that the same is not interposed for delay.

S. SCHOYER, JR.

Order on Demurrer.

And now, March 1st, 1897, on due consideration the demurrers filed are overruled.

Per curiam:

JOS. BUFFINGTON, *Judge.*

Motion for Appointment of Receiver.

And now, to wit, July 8, 1896, the complainant in the above-stated case, by its solicitors, J. S. & E. G. Ferguson, moves the court to appoint a receiver for the property described in the aforesaid bill of complaint, as prayed for therein, and also to grant a writ of preliminary injunction, restraining the defendants, their agents and servants, as prayed for in said bill, until the further order of the court, and on motion of said solicitors, the court fix- the 10th day of July, 1896, at 10 o'clock a. m., to hear said motions for the appointment of a receiver and for preliminary injunction. Due notice to be given to defendants.

By the court:

JOS. BUFFINGTON, *Judge.*

45 *Order Denying Motion.*

Sept. 7th, 1896. After due consideration the motion for appointment of a receiver is denied.

BY THE COURT.

Answer of Penn Plate Glass Co. and W. L. Kann.

In the Circuit Court of the United States for the Western District of Pennsylvania.

FARMERS' LOAN & TRUST CO. *vs.* PENNSYLVANIA PLATE GLASS CO., PENN PLATE GLASS CO., and W. L. KANN.	No. 6, November Term, 1896.

To the honorable the judges of the said court:

The joint and several answers of the Penn Plate Glass Company and W. L. Kann to the plaintiff's bill, (reserving to both and to each, all and all manner of just exception to the sufficiency of the said bill in law,) respectfully represent:—

1. These respondents specifically deny the averment contained in the 13th paragraph of the bill that the holders and owners of a very large number of said bonds have requested, in writing, the plaintiff to commence this suit and to foreclose the mortgage or deed of trust to the said bill annexed, if it be thereby meant that the holders of one-third or more of the said bonds have so requested the plaintiff to commence this said suit. These respondents aver to the contrary that the said plaintiff has not been requested in writing or otherwise by the holders of one-third of the said bonds to commence this said suit and to foreclose the said mortgage or deed of trust, but aver, upon information and belief, and as they expect to be able to prove upon the trial of this cause, the said plaintiff was so requested only by one J. G. Beemer, who, as these respondents believe, is the holder of forty-five thousand dollars of the said bonds in connection
46 with one George Cowan, who is, or was lately, the holder of a few of the said bonds, who have indemnified the said Farmers' Loan & Trust Company from the cost and expenses of the said litigation.

2. And these respondents further answering, without admitting the further averment in the said 13th paragraph that the holders of the bonds secured by the said mortgage or deed of trust, are numerous and that the names and residences of many of such holders of said bonds are unknown to the plaintiff, deny that therefore the plaintiff could not make such holders parties to the said bill, because, these respondents say that under the provision of the said mortgage contained in the 8th article thereof, (page 13,) ample provision is made for a meeting of all bondholders, at the call of the trustee, in the circumstances recited in the said provision, and that the said plaintiff could at any time have secured a meeting of the bondholders, as

therein provided, at which it could have informed itself of the names and addresses of all the bondholders.

3. Respondents further say that by the provisions of the 5th article of the said mortgage the majority of the bondholders have a veto power over the action of the trustee in the election to foreclose the said mortgage and over the action of the quorum of one-third of the holders of the said bonds in requesting, in writing, the institution of any suit or proceeding, and that the plaintiff, acting, as respondents aver and believe, and expect to be able to prove, in collusion with, and at the request of, the said Beemer and the said Cowan, has failed to afford to the majority of the bondholders any knowledge of the present proceedings, or of any other contemplated proceedings, or to give to them an opportunity of a meeting called in accordance with the terms of the mortgage, to exercise their veto power, if they saw proper so to do.

4. Respondents further answering, say that one of these re-
47 spondents, W. L. Kann, became the purchaser of the plant and property of the Pennsylvania Plate Glass Co., a corporation organized under the Corporation Laws of 1874 — Pennsylvania, at a receiver's sale, directed and decreed by the court of common pleas of Westmoreland county, in a certain proceedings in equity at No. 265 of said court, wherein George Cowan, Philip Semmer and others were plaintiffs and The Pennsylvania Plate Glass Company defendant, said decree being dated May 5, 1894, subject to the lien of the said mortgage described in the plaintiff's bill, said mortgage being the same recited in this bill, and that in pursuance thereof a deed was made to him, the said W. L. Kann, for the said property, by the said receiver, which was duly approved by the court of Westmoreland county, conveying to him the said property subject to the lien of the said mortgage. And that the said Kann subsequently granted and conveyed the property so purchased to the said Penn Plate Glass Company, codefendant.

5. These respondents humbly pray the court that the said plaintiff may disclose the written request averred in its said bill, of bondholders to bring this suit and to proceed to a foreclosure of the mortgage described, together with the signatures thereto.

6. These respondents further answering, say that as they are advised and believe, and expect to be able to prove, neither of these said respondents is under any legal, moral or equitable duty or obligation to advance the money to pay the coupons on the bonds secured by the mortgage described in the said bill, or to advance the money for the payment of the principal debt secured by the said mortgage; that as respects the bonds secured by the said mortgage, which are held by the said Beemer, the said Cowan and the said Philip Semmer, or A. C. Boyd, or A. C. Boyd & Company, or any of the holders of such bonds, mediately or immediately, from them acquired by such holders since the decree of insolvency of the Pennsylvania Plate Glass Company by the court of common
48 pleas of Westmoreland county, the same are not protected by any lien of the said mortgage on the premises acquired by the said Kann under the receiver's sale aforesaid, so ordered and

directed by said court of common pleas, and now owned and held by the Penn Plate Glass Company, through conveyance by him, the said Kann, because these respondents say that the said mortgage was illegally and fraudulently issued, and are wholly invalid and unauthorized and in direct violation of the laws and conditions precedent provided by the Commonwealth of Pennsylvania, to authorize the increase of indebtedness of corporations, under the Corporation Law of 1874, and its supplements, which law these respondents refer to, and make part of this answer, in this: That under the said law the right to issue bonds, with or without coupons and to secure the same by mortgage, is limited to an amount equal to one-half of the capital stock actually paid in. These respondents aver that at the time of the proceedings had for the issue of the bonds and the mortgage in the said bill mentioned, no part of the capital stock had been actually paid in; that the certificates and proceedings purporting to have been had relating thereto, and which were filed in the office of the secretary of the Commonwealth of Pennsylvania, as authority for the issue of the bonds and mortgage aforesaid, were absolutely and utterly false, within the personal knowledge of the said Beemer, said Cowan, said Semmer and the said A. C. Boyd; and respondents will produce upon the trial of this cause, copies of said certificates and proceedings, duly exemplified, and the transfer books and stock ledgers of the said Pennsylvania Plate Glass Company, and other evidence to fully substantiate these allegations.

They further answering, say that the stock described in said certificate as held by certain individuals, was, to them, the said Boyd, Beemer, Semmer and Cowan, well known to have been held by such holders as a mere cover for them, and that at, or immediately, or very shortly after the date of the proceedings had for the
49 creation of the said bonds and mortgage indebtedness, over seven thousand two hundred and twenty-five shares of the ten thousand shares of capital stock were returned to the treasury of the Pennsylvania Plate Glass Company, from whence it issued to the firm of A. C. Boyd & Company, contractors, for the erection of the Pennsylvania Plate Glass Company, said contracting firm being composed of A. C. Boyd, Phillip Semmer, George Cowan, and, as respondents believe and aver, and expect to be able to prove, of the said J. G. Beemer; and they further say that all of the bonds thus issued secured by the mortgage aforesaid, were also issued to the said A. C. Boyd & Company, and by them passed into the hands of the said A. C. Boyd, George Cowan, J. G. Beemer and Philip Semmer.

These respondents further answering, say that the said Beemer, A. C. Boyd, Philip Semmer and George Cowan were the promoters of the Pennsylvania Plate Glass Company; that to procure a charter from the Commonwealth of Pennsylvania, under the Corporation Law of 1874 aforesaid, they prepared false and fraudulent articles of association to be filed with the secretary of the Commonwealth, and filed the same with the secretary of the Commonwealth, and thereupon, and by reliance thereon, the governor of Pennsylvania issued letters patent to the Pennsylvania Plate Glass Company; that the

said certificate or articles of association were verified by affidavit, and represented among other things that the said George Cowan was the treasurer of the said corporation; that he had received as such treasurer ten per cent. of one million dollars of the capital stock, viz: one hundred thousand dollars, as required by the laws of Pennsylvania, in cash; that the stock of the said company had been subscribed for by one Wray E. Davis to the amount of three thousand eight hundred and eighty-seven shares (being three hundred and eighty-eight thousand seven hundred dollars of par value), the said Wray E. Davis being a porter in the store or warehouse of the said Cowan in New York city, and totally without
50 pecuniary resources; that Daniel Harrison, of Pittsburg, Pa., had subscribed for one thousand two hundred and twenty-six shares of the said capital stock (amounting to one hundred and twenty-two thousand six hundred dollars), when the said Daniel Harrison was a man without any pecuniary resources to justify any such subscription within the knowledge of the said promoters, and that Thomas McKie, of New York city, had subscribed for four thousand seven hundred and seventeen shares (aggregating four hundred and seventy-one thousand seven hundred dollars of the capital stock), whereas the said promoters well knew that the name of Thomas McKie was used as a mere cover for the purpose of the articles of association; and these respondents aver that out of all the subscriptions of capital stock set out in the said articles of association but two hundred and seventy shares were *bona fide* subscriptions; that all the rest of the alleged subscriptions were false and fraudulent, within the knowledge of the said Cowan, Boyd, Semmer and Beemer, and their names were used to conceal the real control of them, the said Beemer, Boyd, Semmer and Cowan, and that neither one hundred thousand dollars in cash or any part thereof was at any time ever paid in to the said George Cowan in money on account of stock subscription.

And these respondents further answering, say that in the certificates filed for the increase of indebtedness, and to authorize the issuing of two hundred and fifty thousand dollars of bonds secured by the mortgage described in the said bill, the said Cowan certified, under oath, that the said certificate contained a complete list of stockholders; and that the said holders were the owners of the entire issue of the stock of said company; whereas in truth and in fact they, the said alleged stockholders, were not the holders of such stock, within the knowledge of the said Cowan; that there were no takers of said stock, and none of them had made any payment in cash to the said company for any portion of the capital stock;
51 that in the list of said stockholders there *was* included A. C. Boyd & Company, for one thousand five hundred shares, and Wray E. Davis for seven thousand and fifty-two shares—an increase in the alleged holdings of said Davis of three thousand one hundred and sixty-five shares, aggregating three hundred and sixteen thousand five hundred dollars; that the said meeting to increase the indebtedness was held as set forth in said certificates, on the 15th of November, 1890; that the said certificates were filed in the office of

the secretary of the Commonwealth, on the 15th day of December, 1890; that at a meeting of the board of directors of December 18, 1890—three days later—it was resolved to cancel the subscriptions of the said Wray E. Davis, to the amount of six thousand and fifty shares, and of Daniel Harrison to the amount of one thousand and two hundred and twenty-five shares, aggregating seven thousand two hundred and seventy-five shares, amounting to seven hundred and twenty-seven thousand five hundred dollars, and to have the said shares returned to the treasury of the company; that subsequently, the shares so returned were issued to A. C. Boyd & Company, as contractors for the building of the works, and from them to the said Cowan, Beemer, Semmer and the said A. C. Boyd.

And these respondents further answering, say that there had never been a time from the original promotion of the said company until its insolvency under decree of the court of common pleas of Westmoreland county aforesaid, that the said company had not been wholly or solely under the control of the said Beemer, Semmer, Boyd and Cowan; and that whenever other names appear, at any time, as stockholders, or as directors, other than their own names, such names were used as covers to suit the purposes of the said four parties hereinbefore mentioned, and conveyed the land upon which the works were subsequently erected to the said company for $70,000 of stock, although the same had been donated free as an inducement for the location of said works.

52 These respondents further aver that should said Cowan, the said Beemer, the said Semmer and the said Boyd, be compelled to make payment of their just indebtedness to the said company, and to account for the moneys which they have alleged have passed in and to the said company, the said Pennsylvania Plate Glass Company would not have been insolvent, and would not be insolvent, today, and would be amply able to meet any liability it might be under on the said bonds secured by the said mortgage, as well as on all other indebtedness. That said Kann is a stockholder and a judgment creditor of the Pennsylvania Company and became an innocent holder and creditor without notice of the frauds alleged before proceedings for the appointment of the receiver aforesaid had been instituted.

7. These respondents further answering, say that as they are advised and believe, said mortgage does not cover any future improvements upon the said plant of the Pennsylvania Plate Glass Company, other than property, real, personal or mixed, belonging to the Pennsylvania Plate Glass Company at the date of the said mortgage, or which might thereafter be acquired by the said Pennsylvania Plate Glass Company, and did not purport to be a lien upon any improvements, machinery, additions or other property real and personal, or mixed, of any description whatsoever, which might thereafter be put upon the mortgaged premises by any subsequent owner of the said property; nor did the said mortgage include or purport to convey the franchises of the Pennsylvania Plate Glass Company; that therefore the said plaintiff is not entitled to the relief prayed for, as respects improvements and betterments put upon the said

mortgaged premises, by either of these respondents, under the acquisition of their several titles as aforesaid, nor to any of their rights or franchises other than the premises specifically described in the said mortgage.

8. These respondents further answering, say that since the
53 acquisition of the said property under the receiver's sale aforesaid, by the said Kann; and by the Penn Plate Glass Company, as a vendee of the said Kann, there has been expended for water works, to supply the water absolutely necessary for the running of said Penn Plate Glass Company, the sum already, of twenty-five thousand dollars, the basin for containing the supply of water being upon property not embraced in the said mortgage, nor at any time owned by the Pennsylvania Plate Glass Company. And have expended in the erection of a producer gas plant, twenty-five thousand dollars; and have also added to the equipment of the said plant, buildings and machinery which *has* doubled the capacity of the production of the plate glass over and above what the same was at the time of the receiver's sale aforesaid, or at any time prior thereto.

9. These respondents further answering, say that at the time of the receiver's sale aforesaid the Pennsylvania Plate Glass Company had no supply of natural or other gas for the running of its plant, and was dependent upon oil and coal, at an enormous expense; and had no adequate water supply for the operation of said works; and had had neither for a long period of time prior thereto; and aver that had the property described in said mortgage, at that time been sold upon proceedings to foreclose the said mortgage, the said mortgaged premises would not have produced a sum exceeding fifty per cent. of the face value of the bonds secured by the said mortgage. These respondents submit that in no event are the holders of said bonds entitled to any greater equity or rights in the premises now owned and controlled by the Penn Plate Glass Company, than the said premises at the date of the receiver's sale would have afforded the holders of said bonds, under foreclosure proceedings.

10. These respondents further answering, submit that so far as said bill prays for a receiver of the Pennsylvania Plate Glass Company, it is not entitled to such relief, because they say that
54 the court of common pleas of Westmoreland county, Pennsylvania, had acquired jurisdiction over the property and assets of the Pennsylvania Plate Glass Company, in the bill filed by Phillip Semmer, then president of the said company, and George Cowan, then treasurer of the said company, averring its insolvency and its inability to pay its debts, at the number and term hereinbefore recited, and praying for a dissolution and accounting, and the appointment of a receiver; and that in pursuance of the said bill the said court did appoint one Joseph W. Stoner receiver of all the property and assets of the said Pennsylvania Plate Glass Company, who has not yet been relieved from the duties imposed upon him by the appointment of the said court aforesaid; and that the said receiver has not been made party defendant to this bill.

11. These respondents further answering, say that the Penn Plate

Glass Co., the present owners of the premises described in the said bill are wholly solvent, with a capital stock of two hundred and fifty thousand dollars, of which two hundred and twenty-five thousand dollars have been fully paid in, and twenty-five thousand remains in the treasury, hereafter to be disposed of; that it is in full, and successful operation and is producing plate glass at the rate of one million two hundred and fifty thousand square feet of plate glass per year; that it is fully able and responsible to pay all and every indebtedness of the Penn Plate Glass Company, whether contracted in its own name, or whether the same may be adjudged to be due in this proceeding by the Penn Plate Glass Company; and that an interference with its operations by the appointment of a receiver will be destructive to the business of the Penn Plate Glass Company, and greatly to the prejudice of its employees, averaging about four hundred workmen, and to the fulfillment of existing contracts for the delivery of plate glass, in the future, by the said Penn Plate Glass Company, extending until November, 1897, and covering almost the entire production of the works for that period of time.

55 12. Respondents further answering, say that the said Beemer, Cowan and Semmer made false and fraudulent statements of the condition of the said company for the purpose of procuring money by loan, and did succeed by securing by said false representations, money to a large amount from this respondent, W. L. Kann; they specify that on December 22, 1892, the balance-sheet taken from the books and accounts of the said business showed a loss of over one hundred and nineteen thousand dollars; that the said parties hereinbefore named, deliberately changed said balance-sheet and prepared a false and fraudulent one showing a net profit of five hundred dollars for the current year, which they used to secure large loans; that to conceal the false and fraudulent alterations aforesaid, they, on or about the 22d day of December, 1892, either together, or with the knowledge of each other, caused the books of account of the Pennsylvania Plate Glass Company to be destroyed by burning, as these respondents are advised, informed and believe, and expect to be able to prove, and that today there are not to be found any of the books of account, or entries to show the character or extent of the business done by the Pennsylvania Plate Glass Company, prior to the 22d of December, 1892.

13. And these respondents further answering, say that the said fraudulent alteration of the balance-sheet was covered by the device of the said George Cowan, with the knowledge of said Beemer, and of said Semmer, on the 22d day of December, 1892, turning into the treasury of the said company seven hundred and nineteen shares of the capital stock of the company then held in his name; then immediately withdrew the same, electing to treat the return of the stock to the treasury as an asset resulting from the operation of the business of the company for the current year, to substantiate the allegation of a net profit of five hundred dollars. And the said

A. C. Boyd on the same day turned into the treasury for the
56 same purpose, one hundred and twenty-five shares, and subsequently, after such conversion to the treasury had served

its purpose, withdrew the same from the said treasury into his own personal name. And the said Philip Semmer, on the 22d day of December, 1892, for the same purpose, turned into the said treasury, five hundred and four shares, and subsequently, the same having served its purpose, with reference to the falsified balance-sheet, withdrew the same for his own personal use.

14. Respondents, further answering, say that in addition to the fraudulent conduct and actions hereinbefore recited, the said Beemer, Semmer, Boyd and Cowan, in fraudulent collusion with each other, caused contracts to be let to the firm of A. C. Boyd & Company, of whom certainly the said Boyd, the said Semmer, and said Cowan were partners, and as affiant believes, was also the said Beemer, at a gross overvaluation, for the construction of the plate-glass works of the Pennsylvania Plate Glass Company, for the purpose of enabling the said A. C. Boyd & Company to withdraw from the said company the whole of the capital stock and of the bonds, in payment thereof, so that the said works and real estate embraced in the said mortgage stand as having cost the sum of about one million dollars of the capital stock and two hundred and fifty thousand dollars of the bonds secured by the mortgage aforesaid. Whereas, in truth and in fact the same were not worth a greater sum than two hundred and fifty or three hundred thousand dollars. And the stock and the bonds so issued were divided and apportioned among them, the said Beemer, Boyd, Semmer and Cowan.

15. These respondents further answering, specifically deny the allegation contained in the 14th paragraph of the bill, that the said W. L. Kann and the Penn Plate Glass Company assumed and agreed to pay the bonds issued under the mortgage aforesaid, according to the tenor of the said bonds, and say that they
57 entered into no obligations, express or implied, to pay the said bonds, or the debt mentioned in the said mortgage, but did purchase the property described in the said mortgage, subject to the lien of the said mortgage, if any lien there were. And they further specifically deny that there existed on the part of any holder of the property under it, by the terms of the said bonds, any liability for the payment of the said bonds, and aver that the sole recourse of the holders of the said bonds, by their own contract and agreement, was by enforcement of the mortgage lien against the property specifically described in the said mortgage.

16. These respondents further answering, aver, under advice of counsel, that having purchased the property described in the said mortgage, subject only to the lien of the said mortgage, — have a right to assert all the defenses which may exist against the said mortgage, or to contest or deny the existence of any lien, by reason of said mortgage, that the said mortgagor, the Pennsylvania Plate Glass Company, could have done. That while they do not contest or deny the right of an innocent holder for value, who rely upon the mortgage aforesaid, they do deny the right of the plaintiff to enforce the said mortgage against the said property for the benefit of those who were parties to the frauds hereinbefore recited, or who have obtained their holdings of bonds by, through, or from, the said

Boyd, Beemer, Semmer and Cowan, or either of them, since the decree of the court of common pleas of Westmoreland county aforesaid, against the Pennsylvania Plate Glass Company.

Humbly submitting to this honorable court, that neither in law or in equity, or in morals, are the said Cowan, Semmer, Beemer or Boyd, as bondholders, entitled to enforce, through the medium of the plaintiff as trustee of the said mortgage, any lien of the
58 said mortgage, or the bonds held by them, these respondents pray that the relief be refused and these defendants dismissed at plaintiff's costs.

[SEAL.] PENN PLATE GLASS COMPANY,
By W. L. KANN, *President.*
W. L. KANN.

S. SCHOYER, JR.,
S. B. SCHOYER,
Solicitors for Respondents Answering,
139 *Fourth Avenue, Pittsburgh, Pa.*

Complainant's Exceptions to Answer.

And now, to wit, October 28th, 1896, the said complainant by its attorneys, J. S. & E. G. Ferguson, excepts to the joint and several answer filed in the above-stated case by the Penn Plate Glass Company and W. L. Kann, for that the said answer is impertinent in this:

First. Paragraph one of said answer sets up no matter of fact in contradiction to the averments of the thirteenth paragraph of the bill of complaint which it purports to answer, but in fact avers matter of law, because in substance it alleges that under the terms of the mortgage in suit the complainant was not entitled to begin suit unless requested in writing or otherwise, by the holders of one-third of the bonds secured by the mortgage sued upon; and if such request is necessary under the terms of the mortgage, then the matter alleged in said paragraph and answer is matter of demurrer to the bill, because the thirteenth paragraph of the bill does not allege that the holders of one-third of the said bonds have requested complainant to commence this suit, and to foreclose the said mortgage or deed of trust.

Second. And it further excepts to the said first paragraph of said answer on the ground of impertinence because said complainant says: That under the terms of the mortgage sued on, it had a right, in its discretion, upon default made, according to the terms of the mortgage, to begin suit without request from any of the
59 holders of bonds, and that therefore the averments of said paragraph that said complainant was only requested by said J. G. Beemer in connection with one George Cowan, is impertinent.

Third. The averments of the second paragraph of said answer are excepted to as impertinent, because it is unnecessary that the holders of the bonds should be made parties to this suit. Complainant was their trustee, and stands in their place and stead. And further, even if said bondholders were necessary parties, it was not bound to call

a meeting of the bondholders in order to ascertain their names and residences, and it is not a reasonable and necessary inference that calling such a meeting would have disclosed the names and residences of such bondholders.

Fourth. Complainant excepts to the averments contained in the third paragraph of said answer for impertinence because it says: That the paragraph avers matter of law in its allegation that the fifth article of the mortgage gave a majority of the bondholders a veto power over the action of the trustee in its election to foreclose said mortgage and that said majority had no opportunity in a meeting called in accordance with the terms of the mortgage to exercise their discretion if they saw proper so to do, and exceptant therefore says that the matter alleged in said paragraph is proper matter for demurrer and not for answer and because it says that under the true construction of the mortgage sued on the calling of such a meeting was unnecessary and exceptant had a right to exercise its discretion with reference to the foreclosing of said mortgage.

Fifth. Complainant excepts for impertinence to the prayer contained in the fifth paragraph of said answer because the request referred to therein, under the terms of the mortgage sued on, was unnecessary, and because in the first paragraph of said answer said respondents admit that complainant was requested by the holders of upwards of forty-five thousand dollars of the bonds secured by the mortgage in suit.

60 Sixth. Complainant excepts for impertinence to the averments of the sixth paragraph of said answer, because it says that having admitted in the fourth paragraph of said answer that the said Kann bought the premises described in the mortgage sued on subject to the lien of said mortgage, and that the said Penn Glass Company took the title of the said Kann thereto, the said Penn Glass Company and W. L. Kann have no standing in court to allege that the said mortgage was illegally and fraudulently issued, and that it is wholly invalid and unauthorized and in direct violation of the laws and conditions precedent provided by the Commonwealth of Pennsylvania authorizing the increase of indebtedness of corporations, and because all averments contained in said paragraph of said answer with reference to the requirements of said law are matters which do not concern the said answering defendants, and because the alleged fraudulent conduct of A. C. Boyd, George Cowan, J. G. Beemer and Philip Semmer, as set forth in the said paragraph of said answer, is wholly irrelevant to the issue in this case.

Seventh. Complainant excepts to the averments contained in the seventh paragraph of said answer as impertinent, because it says that the matter therein alleged is premature, and does not affect the right of complainant to a decree of foreclosure upon the mortgage sued upon.

Eighth. The complainant excepts to the allegations contained in the eighth paragraph of said answer as impertinent because it says that said answering defendants have admitted in the fourth paragraph of said answer that they hold the mortgaged premises subject to the lien of the mortgage sued on, and it is immaterial

what improvements they may have placed on the said mortgaged premises, and if they have any equity by reason of the facts alleged in said eighth paragraph of said answer, such equity cannot be asserted in bar of the decree of foreclosure.

Ninth. Said complainant excepts to the allegations con-
61 tained in the ninth paragraph of said answer as impertinent because it says: that said answering defendants having admitted in the fourth paragraph of their said answer that they hold the mortgaged premises subject to the lien of said mortgage, it is immaterial what improvements they may have put upon said premises, and if by reason of the matters alleged in the ninth paragraph any equity arises in favor of the said answering defendants, it cannot be asserted in bar of a decree of foreclosure.

Tenth. Complainant excepts to the allegations of the tenth paragraph of said answer for impertinence because it says: that said defendants have admitted in the fourth paragraph of their said answer that the title of the Pennsylvania Plate Glass Company to the premises described in the mortgage was sold under a decree of the court of common pleas of Westmoreland county, Pennsylvania, in equity, at No. 265 of said court by the receiver appointed by that court, subject to the lien of the mortgage in suit, and it was therefore unnecessary to make said receiver a party to the present action, as claimed in said paragraph of said answer.

Eleventh. Complainant excepts to the averments contained in the eleventh paragraph of said answer, because it says that before filing said answer, as appears by the records of the court, the appointment of a receiver was denied, and because it says that the matters contained in said eleventh paragraph are no bar to a decree of foreclosure upon the mortgage sued upon.

Twelfth. Complainant excepts to the allegations contained in the twelth paragraph of said answer, because it says that the matters therein contained are not relevant in this action, and because even if it were true that J. G. Beemer, Cowan and Semmer made false and fraudulent statements to the damage of W. L. Kann, such fact is no defense in the present action. It therefore excepts to the matters set forth in said paragraph of said answer in support of said averment as impertinent and irrelevant.

62 Thirteenth. Complainant excepts for impertinence to the allegations in the fifteenth paragraph of said answer because it says that the matters contained therein are wholly irrelevant.

Fourteenth. Complainant excepts to the allegations contained in the sixteenth paragraph of said answer, because it says that the matters therein contained are matters of law, and in any event would not bar a decree of foreclosure upon the mortgage, which is a proceeding *in rem*, and does not personally affect or concern the said answering defendants.

Fifteenth. Complainant excepts to the matters alleged in the seventeenth paragraph of said answer as impertinent because it says that the matters therein alleged do not concern the present issue, and because it says that said answering defendants having admitted that they hold the property described in the mortgage, subject to the

lien of said mortgage, they have no right to set up any interest or claim of the Pennsylvania Plate Glass Company, or its receiver, which might arise by reason of any such fraud as is alleged in said paragraph of said answer.

Sixteenth. Complainant further excepts to the said answer because it says that said answering defendants having admitted in the fourth paragraph of their said answer that they took the title to the mortgaged premises subject to the lien of said mortgage, in equity and good conscience it formed a part of the purchase-money thereof which they agreed to pay, and which they are bound to pay to the trustee of said mortgage, and all matters contained in the said answer, seeking to avoid such liability so far as the mortgaged premises are concerned, are wholly irrelevant and immaterial.

In all of which particulars said complainant excepts to the answer of the said defendants as impertinent and humbly prays that the said exceptions may be referred, and that the said matter in said answer excepted to may be expunged from the said answer.

THE FARMERS' LOAN AND TRUST CO., *Plaintiff*,
By its solicitors, J. S. & E. G. FERGUSON.

63 *Opinion Sur-exceptions to Answer.*

BUFFINGTON, *J.:*

The complainant has filed exceptions to the joint and several answers of the Penn Plate Glass Company and W. L. Kann in sundry specified particulars on the ground of impertinence.

The matter thus objected to consists, *inter alia*, in sundry allegations of fraud in the issue of bonds by the officers of the Pennsylvania Plate Glass Company; of lack of power in said corporation to execute the mortgage sought to be foreclosed, of its invalidity; the absence of *bona fide* ownership of the bonds and the payment of value therefor by the holders; of the right of the answering respondents to raise these questions, of their claim to equitable relief and compensation for betterments put upon the mortgaged premises by them, and that a request by a certain number of bondholders was a condition precedent to complainant's right to begin foreclosure proceedings.

Upon the questions whether these positions are well taken, and whether the facts alleged will, in the end, prove material in the suit upon the mortgage, we express no opinion.

To reach a conclusion upon these points would in substance involve a disposal of the entire case and the determination of important and disputed legal principles. Such a decision might have been reached had the complainant put the case down for hearing upon bill and answer. This it has not done, but in effect seeks to do the same thing by a motion to expunge matter as being impertinent.

An examination of the authorities makes it clear that such is not the purpose or scope of such a summary motion. In The Attorney General *vs.* Rickards, 6 Bevan, 450, the master of the rolls said: "The

court cannot go into all the merits of a case and consider what the ultimate rights of a plaintiff may be, for the purpose of determining,
and that upon an imperfect argument, whether certain allega-
64 tions, the materiality of which may be doubtful, are actually
to be considered as immaterial. It would have the effect of drawing the whole merits of a cause into question, upon an allegation of impertinence. This would certainly be an inconvenient mode of proceeding, and one not in the least degree, calculated to preserve any right which the party who takes the objection has in the cause; for if it should appear, upon the consideration of the case on its merits, that the allegations complained of are immaterial, they cannot, in any degree, support the equity of the case, or give the plaintiff any right as against the defendant."

Obviously such a course may be pursued where the matter complained of is certainly not pertinent, irrelevant and improper. Chapman *vs.* School District, Deady, 108; Federal Cases, 2607; and where the duty of the court to strike the objectionable matter from the record is plainly manifest, or as was said in Davis *vs.* Cripps, 2 Y. & Coll, ch. 443, "clear to demonstration." But where the impertinence is not thus "clear to demonstration" the propriety of abstaining from present decision is apparent for, as Story on the Equity Jurisprudence, § 267, says, "Nor will the court, in cases of alleged impertinence, order the matter alleged to be impertinent to be struck out, unless in cases where the impertinence is very fully and clearly made out; for, if it is erroneously struck out, the error is irremediable; but if it is not struck out, the court may set the matter right in point of costs."

Moreover the leaning of the court is to give the answer a liberal construction on the point of matter irrelevant. Tucker *vs.* The Cheshire Rail Road Company, 1 Foster, 38; Woods *vs.* Morrell, 1 Johns Ch., 106; Griswold *vs.* Hill, 1 Paine, 390; Federal Cases, 5835.

In the light of these authorities we are constrained to overrule complainant's exceptions.

65 *Replication.*

And now, to wit, March 14, 1897, the plaintiff joins issue on the matters alleged in the answers.

J. S. & E. G. FERGUSON,
Attorneys for Plaintiff.

Complainant's Testimony.

Depositions of sundry witnesses taken before me, Thomas F. Daniels, a notary public within and for the county of New York and State of New York, on the 12th day of April, 1894, between the hours of 9 a. m. and 6 p. m., at the office of Turner, McClure & Rolston, in the Farmers' Loan and Trust Company's building, No. 22 Williams street, in the city of New York, county and State of New York, pursuant to the annexed notice, which depositions are to be read in evidence on behalf of the complainant in an action now pending in the circuit court of the United States for the western district of Pennsylvania, in which The Farmers' Loan and Trust Company, trustee, is complainant and The Pennsylvania Plate Glass Company *et al.* are defendants.

NEW YORK, *April 12th*, 1897—11 a. m.

Appearances.

Messrs. Turner, McClure & Rolston, solicitors for complainant, The Farmers' Loan and Trust Company, trustee.
Herbert B. Turner and Francis T. A. Junkin, Esqs., of counsel.
Sol. Schoyer, Jr., Esq., solicitor for defendants.

Testimony of Whittlesey D. Searls.

WHITTLESEY D. SEARLS, a witness called on behalf of the complainant, having been duly sworn, testifies as follows:

Direct examination by Mr. JUNKIN:

Q. Mr. Searls, where do you reside?
A. New York city.
66 Q. You are of full age?
A. I am.
Q. Are you in any way connected with The Farmers' Loan and Trust Company, the complainant in this suit?
A. I am.
Q. What is your relation to that company?
A. Vice-president.
Q. For how long have you been vice-president?
A. Fifteen years.
Q. As such, is it your duty to pass upon the corporate trusts which it accepts?
A. Yes.
Q. (Paper shown witness.) I hand you an instrument which purports to be a mortgage made by the Pennsylvania Plate Glass Company to the Farmers' Loan and Trust Company. Will you examine it?
A. (Witness looks at paper handed to him.)
Q. Was that instrument accepted by the Farmers' Loan and Trust Company?
A. Yes.

Q. By whom is it signed on behalf of the Farmers' Loan and Trust Company?

A. It was signed by R. G. Rolston, as president, and attested by E. S. Marston, as secretary, who attached the seal of the corporation to the document.

Q. Are you familiar with each of those signatures and with that seal?

A. Yes.

Q. Are those the signatures of Rosewell G. Rolston and E. S. Marston, as president and secretary, respectively, and is that the seal of the Farmers' Loan and Trust Company?

A. Yes.

Q. At the end of the mortgage is there a certificate as to the recording of the mortgage?

A. There is the certificate of the recorder of Westmoreland county, Pennsylvania.

Q. What date was it recorded?

A. 12th day of January, 1891.

Q. Where was it recorded?

A. Mortgage Book 43, page 1, etc., in the county of Westmoreland, State of Pennsylvania, signed by William B. Conway, recorder.

67 Q. You accepted the trusts created by this instrument and acted as trustee under this mortgage?

A. Yes.

Q. Ever since the day of its date, which was the 1st of January, 1891?

A. Yes.

Mr. JUNKIN: I offer the mortgage in evidence.

The original mortgage is marked "Complainant's Exhibit 1, April 12, 1897," and it is agreed that said mortgage may remain in possession of counsel for the complainant and a copy thereof be attached to the deposition, the original mortgage to be produced at the trial, if desired.

Q. What did you do with respect to the certifying of bonds under the trust?

Mr. SCHOYER: I object, because the presumption is that he did what his duty was as prescribed by the mortgage, and it has no relation to the particular issue in this case.

A. The bonds were all certified and delivered.

Q. Have you records in your office in which the certification of bonds is noted and in which you take receipts for the delivery of bonds?

A. We have.

Q. It is your usual course?

A. It is.

Q. Will you produce the book in which such record is kept in this case?

(Witness produces book.)

Mr. SCHOYER: I make no objection to the validity of this book, if you will have the entries referred to copied.

Q. What record have you in your hand?
A. The record of new bonds, known as No. 6 of the Farmers' Loan and Trust Company records.
Q. At what page of that record have you entries relating to the Pennsylvania Plate Glass Company bonds?
A. Pages 456 and 457.
Q. What do those pages show?
A. On page 456 appears as follows: Headed "Pennsylvania Plate Glass Company, Irwin, Pennsylvania." Below that: "1891,
68 $1,000. Jan 14, rec'd. Bonds Nos. 1 to 250. Order. Page 457: "1st mortgage 6 per cent. 10-year gold bond. Paid. A. Livingston Norman."
Q. Will you explain briefly what that entry means?
A. It means that there were 250 bonds of $1,000 each of the Pennsylvania Plate Glass Company delivered to A. Livingston Norman upon an order of the company.
Q. What does the word "paid" refer to?
A. Trustee's fees were paid.
Q. The fees for certifying the bonds?
A. Yes.
Q. Does it or does it not also indicate that those 250 bonds were certified by you in accordance with the terms of the mortgage before their delivery?
A. This indicates that the bonds were certified before delivery.
Q. Who was A. Livingston Norman?
A. I don't know.

Mr. SCHOYER: I call for a copy of the order of the company referred to by the witness.
Mr. JUNKIN: We will produce it and have it marked as an exhibit.

Q. Was the order referred to for these bonds in writing?
A. It is in writing.
Q. You have testified that you certified and delivered 250 bonds of $1,000 each as called for by the mortgage. Have any of those bonds ever been paid or cancelled, as far as you know?

Mr. SCHOYER: What is the purpose of that question?
Mr. JUNKIN: I think it explains itself.
Mr. SCHOYER: I object to it as irrelevant.

A. Not to my knowledge.
Q. Would you know it if they had been cancelled by the Farmers' Loan and Trust Company?
A. I would have to refer to my records.
Q. Will you refer to your records and see whether any of these bonds have ever been cancelled by the Farmers' Loan and Trust Company?
A. I will.

69 Q. Were you accustomed, as trustee, to pay over your counters, as they became due, the instalments of coupon interest under this mortgage?

A. When provided with money we disbursed the money and cashed the coupons.

Q. What was the last coupon you paid with money furnished by the Plate Glass Company?

A. January, '94, we paid coupons due on that date.

Q. After the payment of coupons in this way what did you do with the coupons?

A. Returned them to the company with a statement.

Q. Were they or were they not cancelled?

A. They were cancelled.

Q. Were any coupons paid by you after the coupon of January 1, 1894?

A. Yes; the coupons of July, 1894, and January, 1895, were paid. I am uncertain as to whether all or only a portion were paid, but before the testimony is closed I will give it exact.

Q. Were they cancelled?

A. They were.

Q. By whom was the money furnished for the payment of those coupons which matured in July, 1894, and January, 1895, if you know?

A. By W. L. Kann.

Q. Were the coupons that were paid, whether the July, 1894, or January, 1895, coupons, cancelled?

A. They were.

Q. What was done with them after their cancellation?

A. They were returned to W. L. Kann with an account.

Q. No payment of interest has been made on this mortgage by the Farmers' Loan and Trust Company, as I understand from your testimony, since the 1st day of July, 1895?

Witness produces the written order called for by counsel for the defendants.

Mr. JUNKIN: I offer that order in evidence.

The original order is marked "Complainant's Exhibit 2, April 12, 1897," and it is agreed that the original may remain in
70 the possession of counsel for the complainant and a copy thereof is set out in the deposition, the original to be produced at the trial, if desired.

The following is a copy of Complainant's Exhibit 2:

"IRWIN, PA., *Jan.* 13, 1891.

To Farmers' Loan & Trust Co., New York:

Please deliver to A. L. Norman the $250,000 first-mortgage bonds of the Pennsylvania Plate Glass Co. when endorsed by you, and oblige,

PENNSYLVANIA PLATE GLASS CO.
C. W. POOL, *President.*"

(Endorsed:) "A. Livingston Norman."

Q. What is the signature to this order?

A. C. W. Pool, president.

Q. Was he president of the Pennsylvania Plate Glass Company at that time?

A. I presume he was.

Q. Was the mortgage signed by him?

A. (Refers to mortgage.) Apparently he was the president of the *company. The mortgage is signed by C. W. Poole, as president,* and A. Livingston Norman, as secretary. That brings out who A. Livingston Norman is.

Mr. SCHOYER: We know that. There is a question unanswered, I think.

At the request of counsel, the stenographer repeats the question unanswered by the witness, as follows: "No payment of interest has been made on this mortgage by the Farmers' Loan and Trust Company, as I understand from your testimony, since the 1st day of July, 1895?"

Mr. JUNKIN: Please answer that question.

A. That date is wrong.

Q. I want you to correct it if it is wrong.

A. The last payment of interest disbursed by the Farmers' Loan and Trust Company was the interest due January 1st, 1895, at which time the Farmers' Loan and Trust Company disbursed sufficient money to meet all the coupons from 250 bonds of $1,000 each. That is the whole history of it.

71 Q. With reference to the cancelling of bonds, do you want to change in any way the answer you gave above?

A. I desire to state to the best of my knowledge no bonds have been cancelled by the trust company.

Q. Would you have known it if any bonds had been cancelled?

A. My record would have shown it.

Q. The interest which became due July 1st, 1895, has not been paid by the Farmers' Loan and Trust Company?

A. It has not.

Q. Was the whole of the coupon interest which became due July 1st, 1894, and the whole of the coupon interest which became due January 1st, 1895, paid?

A. It was.

Q. By money furnished as you have testified above?

A. Yes.

Q. Has any interest been paid by you on any coupon which has become due since the date of January 1st, 1895?

A. No.

Q. Have you any funds in your possession from which such interest might have been paid?

A. No.

Q. Or any part of it?

A. No.

Q. (Paper shown witness.) I show you a paper, purporting to

have attached to it the seal of the Farmers' Loan and Trust Company. Will you examine it and state what it is?

A. (Examines paper.) It is a declaration by the trustee declaring the principal and accrued interest due upon the mortgage made by the Pennsylvania Plate Glass Company, in consequence of default in payment of interest.

Q. By whom was that paper signed?

A. R. G. Rolston, as president, and attested by E. S. Marston, as secretary, and the corporate seal of the Farmers' Loan and Trust Company is affixed thereto.

Q. You are familiar with both of those signatures and that seal?

A. I am.

72 Q. And the signatures are the signatures of R. G. Rolston and E. S. Marston?

A. They are.

Q. And the seal is the seal of the Farmers' Loan and Trust Company?

A. It is.

The paper last shown witness is marked Complainant's Exhibit 3 for identification, April 12, 1897.

Mr. JUNKIN: I offer that in evidence.

Mr. SCHOYER: On behalf of the defendants I object to it because there is no proof of the delivery of this notice of declaration to the Pennsylvania Plate Glass Company and all persons interested therein, especially to the defendants in this bill.

The following is a copy of Complainant's Exhibit 3 for identification:

"To the Pennsylvania Plate Glass Company and all persons interested therein:

Take notice that whereas the Pennsylvania Plate Glass Company has made default in the payment of the semi-annual installment of interest on its bonds secured by its first mortgage, bearing date January 1, 1891, between the Pennsylvania Plate Glass Company and the Farmers' Loan and Trust Company, according to the tenor of said bonds and the coupons accompanying the same, and such default has continued for a period of six months after demand by said trustees in writing for the payment of the said moneys:

Now, therefore, the Farmers' Loan and Trust Company, as trustee under said mortgage, has elected and does now hereby elect and declare that the principal of all the bonds secured by said mortgage and the accrued interest thereon have become due and payable and immediately collectible from and out of the mortgaged premises.

Dated New York, July 6, 1896.

THE FARMERS' LOAN AND TRUST COMPANY,
By R. G. ROLSTON, *President.*

Attest: E. S. MARSTON, *Secretary.* [SEAL.]"

73 Q. Mr. Searls, has the Farmers' Loan and Trust Company been requested by the holders of any of the bonds issued under this mortgage to take any action in respect to the enforcement of the lien of the mortgage?

Mr. SCHOYER: I object because there is no averment in the bill of any written authorization made by bondholders or any quorum of them to file a bill, and the omission of such an averment having already been the subject of demurrer, the question raised thereby having been reserved by the court.

A. Yes.
Q. Was such request in writing?
A. It was.
Q. Have you such request?
A. I have.

Cross-examination by Mr. SCHOYER:

Q. Mr. Searls, I presume that in your testimony you have been guided more by the procedure, records of your office than from your personal knowledge?
A. Yes, sir.
Q. So these various signatures in papers that have been presented to you, you were not present at the time of the execution, but you recognized the handwriting?
A. No; I was not present at the execution that I can positively state, but yet I may have been.
Q. You are speaking of the authenticity of the papers because they form part of your system of business and the records of your office?
A. Yes, sir.
Mr. SCHOYER: May I look at that order?

Complainant's Exhibit 2 is handed to counsel.

Q. What was the date of that mortgage?
A. January 1st, 1891, I think.
Q. I see that while the mortgage bears the date of January 1st, 1891, the acknowledgment of your company was on the 8th of January, 1891?
A. (Refers to mortgage.) Yes; that is right.

74 Q. Do you know when this mortgage was deposited with you; is there anything on the paper which will enable you to state?

A. It may have been in our office two or three days before it was acknowledged.
Q. I mean the formal delivery to you as trustee, is there any endorsement on the back of the mortgage to enable you to show it?
A. No; there is nothing there to show that to us, but it was evidently before the 14th of January, the day of the delivery of the bonds, because we always demand the mortgage back from record before we deliver bonds.

Q. There is no formal acceptance of the trust on your part?

A. Not beyond the acceptance by our signature; our signature being attached to it there is evidence of acceptance.

Q. Then this order, Exhibit 2, bears date January 13, 1891. Do you know when that passed into your custody?

A. On the 14th of January.

Q. Did you personally deliver these bonds?

A. I did.

Q. That was in your department?

A. Yes, sir.

Q. You have no evidence from the company that the bonds had been sold?

A. No, sir.

Q. Did you register them or authenticate the whole of them at one time and deliver them to A. Livingston Norman?

A. Yes, sir.

Q. Who appears to be the secretary of the company on this order?

A. On that order of the president of the company we delivered them.

Q. You had no seal of the Pennsylvania Plate Glass Company on this order?

A. No, sir.

Q. Do you know who presented this order?

A. Well, I could not say positively now, but I presume A. Livingston Norman, inasmuch as I have his signature here as having delivered the bonds to him.

Q. Did you make any inquiry to satisfy yourself that Pool was president and Norman secretary beyond the fact that they had executed the mortgage?

A. Nothing beyond the fact of comparison of signatures.

75 Q. You were not presented with any resolution of the board of directors of that company directing this delivery of bonds?

A. No, sir; the mortgage did not call for it.

Q. But as a matter of fact you did not have any such?

A. No.

Q. This other Exhibit 3 for identification was there a duplicate of this issued?

A. Not to my knowledge.

Q. This declaration then remained where from the time of its date, July 6, 1896?

A. That was executed and handed to our counsel; I presume our counsel took care of it after that and put it where it belonged.

Q. You also testified you had a written request of certain bondholders authorizing you, or urging you, to file this bill, I believe?

A. Yes.

Q. And you had that in your hands?

A. Yes.

Mr. JUNKIN: He did not testify that he had it in his hand.

Q. It was the paper you held in your hand when you answered that question; it was the authorization?
A. It was.
Q. Will you produce it?

Mr. JUNKIN (referring to bundle of papers): I don't think you can, Mr. Searls. It is not here.
Mr. SCHOYER: Put down what counsel states.

Q. Why can you not?
A. Because it is not now in my possession.
Q. Is it not in possession of your counsel who is conducting this examination?
A. Well, I could not say.
Q. You think not, is that your answer?
A. Yes; I could not say.
Q. To whom did you deliver it after it left your hands during this examination?
A. My counsel.
Q. Who is now present?
A. Yes.
Q. He did not eat it, did he? Is that the best answer you can give to my question?
A. That is the best answer I can give at present, yes, sir.
76 Q. What is your objection to producing it?
A. Not being in my possession.
Q. Can you state the contents of it?
A. Not from memory, no.

Counsel for defendant gives notice that unless that paper is produced he will move to strike out the testimony of the witness in relation to having a written authorization.

Q. The paper referred to is part of the records of the Farmers' Loan and Trust Company, of which you are the custodian, are you not?

Mr. JUNKIN: Counsel for complainant objects to the question as being irrelevant and incompetent. There has been no paper referred to that is specific. The witness has had a large number of papers in his hands. You can describe any paper which he has had in his hands specifically and you may be able to refer to it probably, but I object to any such indefinite question as "the paper referred to."

A. (No answer.)
Q. When you answered the question addressed to you by your counsel that you held a written authorization of bondholders requesting you to proceed and file this bill, you had in your hands a paper, which I understood you to say was the written authorization of said bondholders?

Mr. JUNKIN: He did not say anything of the sort.

A. (No answer.)

Q. I then ask you was it or was it not that written authorization?

A. I refer to my answer to the question, if the stenographer will read it.

At the request of counsel, the stenographer reads from his notes the testimony referred to, as follows: "Q. Was such request in writing? A. It was. Q. Have you such request? A. I have."

Q. I now ask you to produce the paper referred to in that question and answer.

A. I am unable to produce the paper inasmuch as it is not in my possession.

77 Q. In whose possession is it, to the best of your knowledge and belief?

A. I can't tell, as I don't know.

Mr. JUNKIN: This whole line of questioning is objected to by complainant's counsel as referring to something that is not described, that is not shown to be at this time in existence, that has no relevancy to the question now before us, the witness having simply testified that the trustee received a request in writing from certain bondholders to take action for the enforcement of the lien of this mortgage.

Recess, 12.30 p. m.

2 P. M.

Q. Mr. Searles, the Farmers' Loan and Trust Company are very largely engaged in the trust business?

A. Yes, sir.

Q. And neither the company nor you have any personal interest in the trusts except to obey the commands of the trust?

A. That is all, sir.

Q. I suppose you have read this mortgage carefully?

A. Not lately; originally I did, I think.

Q. Did you ever read it?

A. I think I have read it.

Q. And you are conversant, therefore, with all the requirements?

A. No; I would not say that; I have read so many of them.

Q. Well, Turner, McClure & Rolston are the general counsel of your company?

A. Yes, sir.

Q. Your attorneys, in point of fact?

A. Yes, sir.

Q. And act for you?

A. Yes, sir.

Q. And when they have papers connected with any case or trust which you have, those papers are at your command; I suppose that you can have them back, if you care for them; they are put there by you and are held by them as your agents or attorneys?

A. Yes, sir.

Q. And hence the paper which you held in your hand this morn-

ing, and which passed from you to your attorney, Mr. Junkin, was in your control, wasn't it, if you chose to call for it?

78 Mr. JUNKIN: I might say here that I simply handed that paper to Mr. Beemer, and Mr. Beemer is going to prove that request.

Mr. SCHOYER: I feel a little hurt that I did not get that paper, and I want him to answer.

A. Yes.

Q. And you did not therefore choose to call for it when I asked for it?

A. Do you recall what I responded? I said I did not have that.

Q. I repeat my last question?

A. No.

Q. And if you had cared to call for it, you could have had the paper at your request?

A. I don't know about that.

Q. And yet Mr. Junkin is your attorney, and that paper passed from your hands to his, sitting at the counsel table?

A. I stated that the paper was handed to my counsel.

Q. At the counsel table?

A. Whatever you call it.

Q. At this table in the presence of the stenographer and commissioner?

A. Now you are asking questions and answering them yourself.

Q. I repeat my last question.

Mr. JUNKIN: I object to this whole line of examination as being entirely irrelevant and as referring to a paper which is not in evidence, which counsel does not describe, and which it is not shown has any materiality to this examination.

A. (No answer.)

At the request of counsel the stenographer reads from his notes the following questions and answers: "Q. And yet Mr. Junkin is your attorney and that paper passed from your hands to his, sitting at the counsel table? A. I stated the paper was handed to my counsel. Q. At the counsel table? A. Whatever you call it. Q. At this table in the presence of the stenographer and commissioner?"

79 Q. What answer do you make to that?

A. As I stated before, I handed the paper to my counsel.

Q. Where and when, after you looked at it this morning?

A. About half past twelve o'clock on the 13th day of April, 1897. If you are going to be technical, I am going to be technical, too.

Q. Meaning today, in the coure of this examination, although this happens to be the 12th?

A. Is today the 12th?

Q. Yes.

A. I am a day ahead, then.

Q. Meaning today,—I want to locate it, you did have it in your

hand and it passed from you to Mr. Junkin in the presence of the commissioner?

Mr. JUNKIN: It will be put in evidence.

A. (No answer.)
Q. I repeat my question.
A. I will leave the commissioner to say himself whether it passed in his presence or not; I am not going to say whether it passed in the presence of the commissioner.
Q. I mean by the commissioner, Mr. Daniels, who is taking this testimony?
A. I think he was here at the time.
Q. What personal interest have you in bringing this procedure?

Mr. JUNKIN: You mean the foreclosure suit?
Mr. SCHOYER: I am not asking you.
Mr. JUNKIN: But I want to understand the question as well as the witness.
Mr. SCHOYER: Yes; bringing this bill for foreclosure.

A. None whatever.
Q. There is a provision, is there not, in this mortgage, requiring indemnity for costs before you proceed or incur costs by proceedings for foreclosure?

Mr. JUNKIN: I object. The mortgage speaks for itself, the instrument itself is in evidence.

80 A. I must refer you to the mortgage, and if it is a legal matter it is always left to our counsel.
Q. Complainant's Exhibit 1 handed to witness. I now hand you the mortgage and call your attention to the clause referred to in Exhibit No. 1, and ask you whether that is a legal question or a financial one.

Mr. JUNKIN: I object to that as asking for an expression of opinion.

A. I don't see what you have reference to here.
Q. I call attention to that part of article tenth as follows:
The WITNESS: Where do you commence to read from?
(Q. continued.) "But the trustee shall be under no obligation"—have you found it?

Mr. TURNER: That is on page 15; you handed him page 16.

(Q. continued.) "But the trustee shall be under no obligation to institute any such suit, or to take proceedings under this indenture, or to enter any appearance or in any way defend in any suit in which it may be made defendant, or to do anything whatever as trustee, until it shall be indemnified to its satisfaction from any and all costs and expenses, outlays and counsel fees and other reasonable disbursements, and from all possible claims for damages for which it may become liable or responsible on proceedings to carry

out such request or demand." Is that in your judgment a legal or financial question?

A. Both.

Q. Are you able to make an answer now, whether or not you had not the power under the mortgage to demand indemnity such as is provided for in the paragraph I have read?

Mr. JUNKIN: I object to that, on behalf of complainant, as calling for an expression of opinion, the witness being asked to interpret an instrument which is the mortgage in evidence.

81 A. Yes; we had the power.

Q. Did you secure indemnification from any and all costs and expenses, outlays and counsel fees and other reasonable disbursements, and from all possible claims for damages for which your company might become liable or responsible on proceeding to carry out the request for the institution of this bill of foreclosure?

Mr. JUNKIN: I object to that as entirely immaterial and irrelevant.

A. The mortgage does not make it mandatory.

Q. I repeat my last question. (Last question repeated by the stenographer from his notes.) I am asking you as to a fact.

A. I don't know.

Q. Who would know, sir; whose duty is it to know?

A. Well, some of the officers of the company would know something about it.

Q. Can you name such officers whose duty it would be to know, if you are not the proper officer?

A. I don't say any proper specific officer.

Q. If you had such indemnification, it would be in your office and open to your inspection, wouldn't it?

A. It would be open to my inspection, yes.

Q. Will you produce it?

A. If I can.

Q. Do you happen to know who did indemnify you?

A. No.

—. Was the process of indemnification not brought to your attention?

A. It was not.

Q. Who authorized the bringing of this suit; who authorized your attorneys to bring this bill?

A. The president of the company.

Q. Have you any knowledge that he had so authorized the bringing of the suit?

A. Not specifically.

Q. Did you have the same kind of knowledge which has enabled you to testify in chief as to the records and procedure of your business?

82 A. I don't exactly understand the question, what you want, what you are trying to drive at.

Q. I will explain it—that in your testimony-in-chief you an-

swered without hesitation about matters of which you had no personal knowledge, but of which you did have knowledge because it was a part of the procedure of the institution upon which you had a right to rely. Now I want to know whether you had the same kind of knowledge of the matter of fact of indemnification, of the matter of fact of placing this procedure or giving instructions to your counsel to bring this suit?

Mr. JUNKIN: The witness has already testified he had no knowledge of indemnification.

Mr. SCHOYER: I now protest against the interruptions of counsel beyond the making of a legitimate objection, for the purpose of telling the witness how to answer.

Mr. JUNKIN: I object to the question last asked as improper because it attributes to the witness testimony which the witness has not given, and I further state that I do not interrupt for the purpose of instructing the witness how to answer.

A. Well, I am at sea yet to understand what the question is, what question you ask me to answer.

Q. I cannot make it plainer. I will therefore ask you another question. Do you know, from records of your office or from interviews with your counsel, or from some source which impresses itself upon you as a fact, that Mr. James G. Beemer has indemnified your company and your counsel for the disbursements, counsel fees and other matters, before you ordered or authorized the institution of this bill of procedure?

A. No; that is not within my knowledge.

Q. Mr. Rolston, the president, is sick?

A. He is.

Q. And you are acting president now in his absence?

A. Yes, I am.

83 Q. When you say it is not within your knowledge, you speak, therefore, of your personal knowledge, but it may be within your knowledge if you choose to look for it?

A. I presume I could look it up.

Q. Well, would you have any objection to looking it up, and we will suspend the examination until you do?

A. I have no objection. I could not tell how long it would take me though.

Q. How long do you suppose it would take you?

A. I should not want to determine.

Q. In the bond, if you will look at the recitation of the bond in that mortgage, this clause occurs, just before the attestation clause: "This bond shall not become obligatory until it shall have been authenticated by the certificate of the Farmers' Loan and Trust Company endorsed hereon." Do you consider that provision for the benefit of the purchasers of the bond?

A. Yes, sir.

Q. And yet you so authenticated the entire issue and gave it to the officers of the company without any notification that the same had passed into the hands of purchasers?

Mr. JUNKIN: Without notification to whom?

Mr. SCHOYER: To the company, the Farmers' Loan and Trust Company.

A. We never received notification where bonds go after they have been certified and delivered in accordance with the terms of the mortgage.

Q. Can you explain then what protection the purchasers of bonds would have by virtue of your authenticating those?

A. Yes; evidence that we certified it was one of an issue described in the foregoing mortgage.

Q. And that you mean by "authentication"?

A. Yes; it says here: "This bond is one of the series of two hundred and fifty bonds."

Q. And without a paper, an order such as exhibited here and marked Exhibit 2, purporting to be signed by a man of whom you
84 had no personal acquaintance, I presume, directing the entire issue of these bonds to be given to the secretary of the company, with whom you had no prior acquaintance, you felt you were in strict compliance with your duty as trustee?

A. That paper did not read as you say.

Q. Then I have to beg your pardon.

A. The name "secretary" I don't think appeared on that.

Q. But you have already testified you delivered it to the man who signed the mortgage as secretary of that company.

A. No; I have not.

Q. Then I ask again, Is it not true that the payee in that order, Exhibit 2, is the person who attested the mortgage of the Pennsylvania Plate Glass Company as its secretary?

A. Apparently so.

Q. Apparently so. And at the time then you honored the order you were in doubt—whether you were or not—that the payee was the same individual who was the secretary of the Pennsylvania Plate Glass Company?

A. We did not care.

Q. And you also saw the name of the drawer of that paper, Mr. Pool, as president?

A. Yes, sir.

Q. Did you care whether he was actually the president or not, or did you make any inquiry?

A. We made comparison with the mortgage as to the signature.

Q. And did you make comparison of the endorsee signature on that order—that signature of A. Livingston Norman was correct, did you compare it with the signature of A. Livingston Norman as secretary of that company?

A. The order being made for the delivery of the bonds to him in full, individually, we did not recognize him as secretary receiving them.

Q. Then you regarded him as a stranger?

A. No; we did not.

Q. You did not as a matter of fact know or care to look at the signature?

A. I know the signature was compared, as to the president, but not compared with the secretary's.

85 Q. Did you compare it with the signature on that mortgage?

A. Yes, sir.

Q. And that conveyed no idea to your mind that the endorsee of that order or the payee in that order might or might not be the secretary of the Pennsylvania Plate Glass Company, who had attested the mortgage?

A. We had no right to question whether he was secretary or not.

A. I don't want to argue so much with you if I can get an answer.

A. I am trying to answer you as I think responsive to your questions. You are trying to identify the man as secretary who received the bond. I am distinctly trying to state he did not receive them as secretary.

Q. You notice on Exhibit 2, in this order, there was no seal of the corporation?

A. No, sir.

Q. And you were not furnished with a resolution of the board of directors?

A. No; I don't know that there was one.

Q. There was no resolution of the board of directors?

A. No; I don't say there was no resolution; I don't know.

Q. You were not furnished with one?

A. We did not want it.

Q. In point of fact, you were not—it is a matter of fact I am asking you about?

A. You asked me a question of which I am not positive; I am not positive there was one in existence.

Q. Did you receive any authorization except that order?

A. None.

Mr. JUNKIN: You have already asked that question long ago. I did not object to it on that ground, however.

Q. You know who the bondholders were, don't you, generally?

A. No, sir.

Q. And you knew further——

Mr. JUNKIN: At what time?

(Q. continued.) At the time you brought this proceeding to foreclose?

A. No; I did not.

86 Q. But you did know that one of the paragraphs of article 8 did provide "that whenever and as often as any contingency shall arise in which a meeting of the holders of the bonds hereby secured shall be necessary or expedient, it shall be the duty of the trustee, or of the president of the party of the first part, on the written request of the holders of not less than one-fifth in amount of the principal of the bonds then outstanding, stating therein the object of such meeting, to call a meeting of the holders of the then outstanding bonds secured hereby, to be held at some convenient place in the town of Irwin, Pennsylvania, by advertisement in at least two news-

papers published in the said city of New York and the city of Pittsburg, Pennsylvania, such advertisement to be published daily in such newspapers for at leas- ten days immediately preceding the time named for such meeting," at or before the bringing of this bill of foreclosure?

A. I did not.

Q. Were you, or were you not, advised by your counsel of this provision?

A. I was not.

Q. Then you, as representing the company, did not, in point of fact, call such a meeting?

A. I did not.

Q. Were you not also aware that under a paragraph in article fifth of the mortgage, a majority in interest of the holders of the principal of the bonds secured by that mortgage then outstanding and unpaid, might waive the right of the trustee to declare the bonds immediately collectible, on such terms and under such conditions as such majority might deem proper, or might annul or reverse such election by the trustee declaring the bonds immediately collectible?

Mr. JUNKIN: The question is objected to as calling for an expression of a legal opinion by the witness and asking the witness to determine the meaning of a clause in the mortgage.

A. No.

87 Q. And in point of fact, you made no arrangement or effort—your company, as such, made no arrangement or effort to get the view of the majority in interest of the holders of the bonds on the question of your election to declare the bonds immediately collectible?

A. I don't know.

Q. Mr. Searls, do you not know that you did not, and that your company did not make such a call?

A. No; I do not.

Q. Would there be a record kept in your office of such call, if it had been made?

A. It might have been.

Q. In preparing to give your testimony here, have you not examined the records of your company with reference to this entire matter?

A. I have not.

Q. Have you not caused examination to be made by some one of your subordinates, to enable you to testify?

A. I have not.

Q. And you have made no examination yourself?

A. I have not.

Q. And then your testimony here is neither from information from your subordinates nor from your own personal examination?

Mr. JUNKIN: I object to the question. The witness has testified of his own knowledge and has shown the source of his information in answer to each question that he has answered.

Mr. SCHOYER: I want again to object to the form of the objection, and protest against it. I repeat the question.

A. I have answered all questions to the best of my knowledge and belief.

Mr. SCHOYER: Read the question again.

Q. (The stenographer repeats the last question from his notes.)
A. I repeat the answer just as before.
Q. Do you mind stating, Mr. Searles, whether the paper of authorization to bring this suit, which you held in your hands
88 this morning, had been delivered to you or to your company before you authorized the bringing of this bill of foreclosure?

Mr. JUNKIN: I object to the question as being based upon a statement which is not shown to be true, which is entirely immaterial and irrelevant, and as misstating the witness's previous testimony.

A. I have every reason to believe it was.
Q. And upon what do you base that reason, your own personal knowledge or from information from your subordinates?
A. I don't think our counsel would have moved in the matter without our instructions—instructions which would not have been given had we not had instructions from the bondholders.
Q. But that you don't know of your own personal knowledge?
A. No.

Redirect examination by Mr. TURNER:

Q. Mr. Searles, did you personally have any knowledge whatever with regard to any request, on the part of anybody, to have your company commence this suit, or any authorization on the part of any officer of your company to counsel to begin this suit?
A. I have knowledge of written requests having been lodged with the company, with the trustee, requesting foreclosure.
Q. You have knowledge of them?
A. Yes.

W. D. SEARLES.

Subscribed and sworn to before me this 17th day of April, 1897.

THOS. F. DANIELS,
[SEAL.] *Notary Public, New York.*

89 *Testimony of James G. Beemer.*

JAMES G. BEEMER, a witness called on behalf of the complainant, having been duly sworn, testifies as follows:

Direct examination by Mr. JUNKIN:

Q. Mr. Beemer, where do you reside?
A. Yonkers, New York.
Q. Are you the owner of any of the bonds of the Pennsylvania Plate Glass Company?
A. I am.

Q. Do you represent other owners of these bonds?
A. I do.
Q. How many bonds do you own?
A. Twenty-three.
Q. Have you those bonds with you?
A. I have.
Q. Let me have those bonds.
A. (Witness produces bonds.)
Q. How many of those bonds do you represent, Mr. Beemer?
A. Twenty-three.
Q. Who are the owners of the bonds you represent?
A. Twelve are owned by Margaret L. Beemer.
Q. Is she your wife?
A. Yes.
Q. And the others?
A. Ten by Mrs. Sar-h M. Hill.

Mr. SCHOYER: Have you a power of attorney in writing to represent them?
The WITNESS: I have.
Mr. SCHOYER: Then I object to any testimony as to those bonds until that is produced.

Q. As to the twenty-five bonds of which you are the owner, can you state the numbers?
A. Twenty-three bonds.
Q. Twenty-three bonds. Can you state those numbers?
A. 241, 242, 24, 23, 244, 12, 11, 10, 9, 7, 8, 5, 6, 4, 3, 1, 2, 25, 28, 30, 29, 31 and 35.
Q. Are they all of like tenor and effect?
A. They are.
Q. State what coupons are attached to those bonds.
A. The last coupons are of January 1st, 1896.
Q. And all subsequent coupons to that date are attached to the bonds?
—. They are.
90 Q. What coupons have you that have been clipped from the bonds?
A. July, 1895.

Counsel for complainant offers in evidence bond No. 242; it being agreed that said bond shall not be marked, but that a copy of the bond shall be attached to the deposition, and shall stand as substantially a copy of each of the bonds referred to.
The following is a copy of bond No. 242:

UNITED STATES OF AMERICA, *State of Pennsylvania.*

No. 242. No. 242.

$1,000. *Pennsylvania Plate Glass Company 6 % First-mortgage Gold Bond.* $1,000.

Know all men by these presents, that the Pennsylvania Plate Glass Company is indebted and hereby promises to pay to the Farmers' Loan and Trust Company of the city of New York or bearer, one thousand dollars, in the gold coin of the United States of America, of or equivalent to the present standard of weight and fineness at the office of said Farmers' Loan and Trust Company of New York City on the first day of January, one thousand nine hundred and one, with interest from the first day of January, one thousand eight hundred and ninety-one, at the rate of six per centum per annum, payable semi-annually in like gold coin, at the office of said Farmers' Loan and Trust Company in the city of New York, on the first day of July and January in each year on the presentation and surrender of the annexed coupons as they severally mature.

$1,000.

In the case of default in the payment of the principal or of any of the said interest in accordance with the tenor hereof, the said principal and interest may become collectible in the manner and with the effect specified and set forth in the deed of trust or mortgage hereinafter mentioned.

This bond is one of the series of two hundred and fifty bonds of like amount, tenor and date, amounting in the aggregate to
91 the sum of two hundred and fifty thousand dollars, and numbered from one to two hundred and fifty, consecutively, the payment of the whole series of bonds, with the interest thereon, being equally secured by a certain deed of trust or mortgage bearing even date herewith conveying the property and franchises of the company more particularly described therein, unto the Farmers' Loan and Trust Company to which reference is hereby made, for the terms and conditions upon which this bond is issued and for the rights and remedies of the holder hereof.

This bond shall not become obligatory until it shall have been authenticated by the certificate of the Farmers' Loan and Trust Company endorsed hereon.

In witness whereof, the Pennsylvania Plate Glass Company has caused its corporate seal to be hereto fixed and the same to be signed by its president, and attested by its secretary, this first day of January, A. D. 1891.

PENNSYLVANIA PLATE GLASS COMPANY,
By C. W. POOL, *President.*

Attest:
[SEAL.] A. LIVINGSTON NORMAN, *Secretary.*"

The following is a copy of a coupon dated January 1st, 1896, attached to said bond.

"$30. Pennsylvania Plate Glass Company

will pay the bearer hereof on the first day of Jan., 1896, thirty dollars in gold coin at the office of the Farmers' Loan and Trust Company in New York city, being for six months' interest on its bond.

1 0

No. 242. GEORGE COWEN, *Treasurer.*"

(Said bond is endorsed as follows:)

Number 242, issue of $250,000. Pennsylvania Plate Glass Company, Irwin, Pa. First-mortgage 6 per cent. ten-year gold bond, $1,000. Interest payable July 1st and January 1st. Principal due Jan'y 1st, 1901.

92 The Farmers' Loan and Trust Company hereby certifies that this bond is one of the series referred to and secured in the within-mentioned mortgage or deed of trust.

THE FARMERS' LOAN AND TRUST COMPANY,
By W. D. SEARLS, *Vice-Pres't.*"

"One thousand

M $1,000 1,000 $1,000 M

Dollars.

$1,000 $1,000."

Q. Now you say that the bonds that are owned by Margaret L. Beemer and Sarah L. Hill are represented by you under a power of attorney given by these persons to you?

A. Yes.

Q. Have you that power of attorney?

A. I haven't it with me.

Q. You produce the bonds owned by these parties and represented by you?

A. I do.

Q. Give the numbers of them.

Mr. SCHOYER: I object to testimony as to any of those bonds until the power of attorney is produced.

A. Sarah M. Hill's, numbers 17, 19, 18, 16, 15, 13, 14, 22, 20 and 21; Mrs. Beemer's, numbers 27, 243, 63, 248, 33, 32, 34, 58, 62, 59, 245 and 26.

Q. Are any of these bonds registered, Mr. Beemer?

A. With the Farmers' Loan and Trust Company?

Q. I say are any of these bonds registered?

A. No.

Q. They are all negotiable to bearer?

A. Yes.

Q. Did you request the Farmers' Loan and Trust Company, as the owner and holder of the bonds which you have testified that

you own and represent, to begin proceedings for the foreclosure of the mortgage which had been put in evidence?

—. I did.

Mr. SCHOYER: Is that request in writing?

The WITNESS: It is.

93 Mr. SCHOYER: Then I object to any statement until the request is produced.

Q. (Paper shown witness.) I show you a paper. Is that the request to which you refer?

A. It is.

Q. By whom is it signed?

—. By me.

Mr. SCHOYER: Let me look at it before you say anything about it.

The paper shown witness is marked Complainant's Exhibit 4 for identification, and is handed to counsel for defendants, who examines same.

Mr. SCHOYER: I have looked at it.

Mr. JUNKIN: Complainant's Exhibit 4 for identification is offered in evidence.

Mr. SCHOYER: The offer is objected to, first, because the signature being for forty-five bonds, they do not aggregate one-third in value of the entire issue of bonds secured by the mortgage recited in the bill, and because James G. Beemer represented himself to be the owner of the entire forty-five bonds, whereas he has just declared that he owns but twenty-three.

The following is a copy of Complainant's Exhibit 4 for identification:

"JANUARY —, 1896.

To the Farmers' Loan and Trust Company:

Default has been made by the Pennsylvania Plate Glass Company on the first day of July, 1895, in the payment of the interest on the bonds secured by the mortgage of that company to your company as trustee, dated January 1st, 1891. Such default has continued for six months after demand made in writing by the trustee for the payment of such interest. The undersigned, holders of one-third in value of the bonds secured by said mortgage and then outstanding, hereby make and deliver to you their written requisition that you commence and prosecute such action, suits or proceedings, at law or

in equity, as shall be necessary to obtain a sale of the mort-

94 gaged premises, by and under judicial authority, and to bar and foreclose the equity of redemption of the mortgagor company, its successors and assigns, and of all persons claiming under them. And the undersigned hereby agree to indemnify and save you harmless from all expenses, costs, outlays, counsel fees or other disbursements which you may incur or become liable for by reason of anything that you may do in carrying out this requisition:

Names.	Addresses.	Amount of bonds.
James G. Beemer.	Yonkers, N. Y.	45."

Q. Mr. Beemer, did you present that request to the Farmers' Loan and Trust Company?

A. I did.

Q. When was the last interest paid to you on the coupons that have matured under this mortgage?

A. January, 1895.

Q. Has any interest been paid you since then?

A. No.

Q. Have you demanded the payment of any interest since then?

A. I have.

Q. Of what interest?

A. Of July, 1895, and January, 1896.

Q. Coupons from these bonds which became due July, 1895?

A. Yes.

Q. And also coupons from these bonds which became due January 1st, 1896?

A. I did not cut the coupons, I made the demand.

Q. Where did you make the demand?

A. At the Farmers' Loan and Trust Company.

Q. When did you make the demand, in each case?

A. After the date at which the coupons became due.

Q. At or about the same time they became due?

A. At about the time.

Q. What did the Farmers' Loan and Trust Company or its representative tell you?

A. That they had no money to pay them.

95 Q. Please read from that Complainant's Exhibit 4 for identification the seventh line, beginnning at the seventh line?

Mr. SCHOYER: I object, as the paper will speak for itself, unless it is to lead up to another question.

A. (Reading:) "The undersigned, holders of one-third in value of the bonds secured by said mortgage and then outstanding."

Cross-examination.

By Mr. SCHOYER:

Q. Mr. Beemer, you say you are the owner of twenty-three bonds?

A. Yes, sir.

Q. And in this paper (referring to Complainant's Exhibit 4 for identification) you speak about being the holder of forty-five?

A. Yes, sir.

Q. And you distinguish, therefore, between being the owner and being the holder?

A. Yes, sir.

Q. There is nothing, however, on that paper to show that you are not the owner as well as the holder, is there?

A. No, sir.

Q. Did you have the letter of attorney at the time you signed that Exhibit 4 for identification?

A. I did.

Q. Why did you not then put down your own name or the number of bonds which you owned, twenty-three, and the names of the real owners, by yourself as attorney-in-fact, for the others?

A. I suppose as a matter of convenience.

Q. Well, the mortgage requires that the bonds shall be deposited with the Farmers' Loan and Trust Company at the time the writing or request is filed with them. Did you deposit those bonds with them?

Mr. JUNKIN: I object because the statement of fact with regard to what the mortgage contains is not correct.

A. (No answer.)

96 Q. I call your attention to the provision in the mortgage, being the second paragraph in article tenth, as follows: "The trustee shall be under no obligation to recognize any person as holder or owner of any bonds secured hereby, or to do or refrain from doing any act pursuant to the request or demand of any person, until such supposed holder or owner shall produce said bonds and deposit the same with the trustee." Did you ever deposit any of the bonds which you either own or of which you were the holder, as set out in Exhibit 4 for identification, with the Farmers' Loan and Trust Company, trustee?

A. So far as——

Q. You can say yes or no, and then make an explanation afterwards.

A. I won't answer yes or no, to that. So far as your question applies to an extract from the mortgage, I can't answer it. So far as it applies to the fact as to whether I made deposit of bonds or not, I did not.

Q. You say you are the owner of twenty-three bonds?

A. I am.

Q. How did you acquire and when did you acquire that ownership?

A. I bought them for cash.

Q. From whom?

A. I decline to answer until advised by counsel whether it is necessary for me to tell my private business in this proceeding.

Q. Do you also decline to answer when you acquired them?

A. I can't give the date from memory.

Q. Have you any data which would fix your memory?

A. Not here.

Q. Did you not dispose of the bonds to Mrs. Beemer, I believe, who is your wife, and to Mrs. Sarah M. Hill; did they not acquire their title through you?

A. I decline to answer that.

Q. To whom or to what officer of the Pennsylvania Plate Glass Company did you pay cash for your bonds?

A. I decline to answer that until advised by counsel, as be-

97 fore as to whether it is proper for me to answer questions as to my own private business in this proceeding.

Q. Don't you know, Mr. Beemer, that you did not buy the bonds

from the company and pay them cash or pay any consideration to the company?

A. Yes.

Q. Do you not know that you acquired your bonds through a firm known as A. C. Boyd & Company?

A. Yes.

Q. Were you not a member of A. C. Boyd & Company?

Mr. TURNER: Did you mean to confine that to the time he bought the bonds or any time?

Mr. SCHOYER: I will by a subsequent question get the time. I want the general proposition first.

A. With the statement that I don't think it is anybody's business, I will answer that I was not, in any way.

Q. Did you have any connection with the firm of A. C. Boyd & Company?

A. I decline to answer that question because——

Q. Were you not one of the promoters?

Mr. JUNKIN: Wait a moment, and let the witness finish his answer.

Mr. SCHOYER: I thought he had finished.

(A. continued.) I decline to answer that question, because if I had any connection with the firm of A. C. Boyd, it is not material in this case, and in fact it is my private business outside of any connection with this.

Q. Were you not one of the promoters of the Pennsylvania Plate Glass Company?

A. I was not.

Q. When did you become, if you ever did become, connected with it?

A. In, I think, December, 1891, about, it may have been November.

Q. As a common stockholder and a preferred stockholder?

A. As a common stockholder.

Q. Did you acquire preferred stock also?

A. Later on.

98 Q. Were you a stockholder of the company at the time the proceedings were instituted for the increase of indebtedness of that company, resulting in the authorization for the issue of these bonds and the mortgage securing the same?

A. I think I was.

Q. Did you take part in those proceedings at that meeting?

A. I am not sure.

Q. Don't you know, sir, at the time that election for the increase of indebtedness, resulting in this issue of bonds and mortgage now in controversy, was held, that the capital stock of the company had not been paid in in cash to the treasurer of the company?

A. No.

Q. Did you make any inquiry?

A. I presume that I was informed that some portion of the capital stock had been paid in in cash.

Q. How much was paid in, according to your information?

A. I can't remember the amount, but something over $100,000.

Q. From whom did you acquire your stock directly, from the company or from some intermediate holder?

A. I acquired some stock directly from the company.

Q. And the rest from whom?

Mr. JUNKIN: I make a general objection to this line of examination.

Q. How much stock did you acquire from the company directly?

A. I can't say exactly.

Q. Well, I don't want the exact amount, but substantially the amount.

A. I subscribed for myself and others for something over $30,000 of stock, for which I paid the company in cash at par.

Q. And when was it you made that payment?

A. Within a short time after I became interested in the company.

Q. That you say was in December or November, 1891?

A. I think so.

Mr. TURNER: Can you have a memorandum made of a general objection to this line of testimony?

99 Mr. SCHOYER: Yes, certainly; with the same force and effect as if objection were taken to each question.

Q. What position, if any official position, did you occupy in the company?

A. I was one of the directors, and I think some time later I was nominally vice-president.

Q. You say something over $100,000 you had been informed was paid in?

A. Yes, sir.

Q. Don't you know that was a fake payment?

A. I do not.

Q. Don't you know that a check had been merely given and immediately checked out, without any money passing to A. C. Boyd & Company?

A. I do not.

Q. Would you recognize the signature of Mr. Cowen; he was the treasurer, wasn't he, George Cowen?

A. Yes, sir.

Q. (Paper shown witness.) I ask you to look at that——

Mr. SCHOYER: I will have that marked for identification.

The paper shown witness is marked Defendants' Exhibit A for identification.

(Q. continued.) I ask you to look at that Defendants' Exhibit A for identification, and ask you whether you do not recognize the signature of George Cowen, treasurer, to that check?

Mr. JUNKIN: I object to the question because that paper is not in

evidence and is not offered in evidence, and is entirely immaterial and irrelevant.

A. I do not. It does not look like his usual signature, as far as I know.

Q. Don't you know, sir, that every dollar of the required payment of ten per cent., under the incorporation act of Pennsylvania, was apparently paid in and immediately drawn out, so that no money in point of fact was paid in as required by law?

100 Mr. JUNKIN: I make the same objection, and I will make a motion to strike out all the testimony afterwards.

A. I do not.

Q. Do you know the signature of George Cowen?

A. I am not familiar with it.

Q. (Paper shown witness.) Would you recognize that as his signature?

A. I am not an expert in handwriting.

Q. Now I hold in my hand a statement of receipts and disbursements, treasurer's report, under date of February 5, 1891——

Mr. JUNKIN: Let the witness state what it is, if you are going to offer it in evidence.

Mr. SCHOYER: I am going to fix a date.

(Q. continued.) And I ask you to look at that paper and state whether or not you were not a member of that company as early as November 15, 1890, to the extent of $100, and whether or not on January 7, 1891, to the extent of $10,000?

Mr. JUNKIN: I object to the witness looking at any paper which is not in evidence, and to his answering a question in reference thereto which could be answered as readily if the paper were not here and not referred to.

The WITNESS: May I make a statement here?

Mr. JUNKIN: Yes.

The WITNESS: It may have been 1890, I am not sure; it was about the time of the organization of the company. I have no desire to make a mistake; this is why I hesitate.

Q. When did you become first advised of the proposed formation of the company—before or after the organization?

A. After it was organized and the plant partially erected.

Q. What did you receive from Mrs. Beemer for the bonds which she holds—or was it a present from you to her?

A. I declined to answer that question in another form be-
101 fore, because you must prove by Mrs. Beemer where she got her bonds and how she got them, and not by me.

Q. I am greatly obliged to you for the information. Well, would you mind telling what you got from Mrs. Hill, or do you make the same answer to that?

A. I have not sworn I sold the bonds to Mrs. Hill.

Q. Did you sell the bonds to Mrs. Hill or did she acquire them from you?

The WITNESS: Shall I answer, Mr. Turner?
Mr. TURNER: Well, Mr. Beemer, I am not your counsel.
Mr. SCHOYER: Put that down.

A. I decline to answer unless advised by counsel.
Q. Did you sell the bonds to Mrs. Hill or did she acquire them from you?
A. Yes; I sold them to Mrs. Hill.
Q. At what rate, at par?
A. At par.
Q. Paid for in money?
A. In cash.
Q. Did you guarantee the bonds to her?
A. I believe I did.
Q. So that practically you are either as the owner or the guarantor, the owner of twenty-three and the guarantor of Mrs. Hill's ten, and you decline to state what consideration Mrs. Beemer paid?
A. No; as long as I have stated that. Mrs. Beemer paid me in cash for the bonds.
Q. At the time she got the bonds?
A. At the time she got the bonds.
Q. You did not guarantee them to her?
A. I did not guarantee them.
Q. You were advised, were you not, of the total issue of stock and total issue of bonds of the Pennsylvania Plate Glass Company?
A. Of the total issue of stock?
Q. Yes.

Mr. JUNKIN: Fix your time.
Mr. SCHOYER: At the time the bonds were issued or authorized.

102 (Q. continued.) The capital stock was $1,000,000, wasn't it?
A. Yes.
Q. And the bonds were $250,000?
A. The bonds were $250,000.
Q. And were you not advised by the contractor, A. C. Boyd & Company, that the entire cost of the plant was but $269,000?
A. I was not.
Q. Nothing of that kind?
A. Nothing of that kind.
Q. You made no effort to find out the value of the property of which you had taken bonds, paying cash at par, the actual value?
A. I was satisfied the property was of more value than the bonds.
Q. How did you fix your knowledge of the value of the property?
A. From information gained of the value of similar plants, and from people who built such plants, and general knowledge.
Q. You then did not examine the quantity of material that went in or the cost of construction?
A. I did not.
Q. Nor were you advised by Mr. Cowen or A. C. Boyd & Company of the actual cost of construction?

A. I was advised by A. C. Boyd & Company and by Mr. Cowen and by Mr. Semmer and various other people.

Q. Of the real cost of construction?

A. Not of the real cost of construction.

Q. Now did you become the owner of the bonds before you were vice-president and director or after?

A. I can't say from memory; I think it was about the same time.

Q. When did you sell these bonds to your wife and Mrs. Hill?

A. I sold the bonds to my wife within a short time of my purchase, a few weeks.

Q. And to Mrs. Hill?

A. And to Mrs. Hill, I think about the 1st of January, 1893.

Q. 1893?

A. I think so.

Q. (Paper shown witness.) Did you ever see that paper?

A. I have seen similar papers.

103 Q. What part did you take in the preparation or circulation of that paper?

Mr. JUNKIN: Do you want to offer that paper in evidence?

Mr. SCHOYER: I don't know.

Mr. JUNKIN: I object to it as incompetent, irrelevant and immaterial and, as shown by his answer, a paper not recognized by the witness.

A. I took considerable part in it; I can't tell just what exactly I had to do with it or what I did not.

The paper last shown witness is marked Defendants' Exhibit B for identification.

Mr. JUNKIN: Do you offer that in evidence?

Mr. SCHOYER: No.

Mr. JUNKIN: On behalf of the complainant, I move to strike out all the testimony relating to the issue of stock.

Redirect examination by Mr. JUNKIN:

Q. Mr. Beemer, you purchased the bonds which you have testified you own, the twenty-three bonds, for a valuable consideration, did you not?

A. For cash.

Mr. JUNKIN: That is all.

JAMES G. BEEMER.

Subscribed and sworn to before me this 15th day of April, 1897.

THOS. F. DANIELS,

[SEAL.] *Notary Public, New York.*

Mr. SCHOYER: Any other witness?

Mr. JUNKIN: We have no other witness today.

Mr. SCHOYER: The testimony before this commissioner is then closed.

It is hereby stipulated by and between counsel for the respective parties, to be of the same force and effect as if made at the beginning

of the proceedings, that the notary is authorized to take down the depositions in shorthand and reduce the same to typewriting, and that the witnesses shall thereupon sign their respective depositions in the presence of said notary, who shall certify in his certificate that the copy he has made is an accurate transcript of his shorthand notes, and that the witnesses have signed before him.

[SEAL.] THOS. F. DANIELS,
Notary Public.

"*Copy of Complainant's Exhibit* 1."

"This indenture made this first day of January, one thousand eight hundred and ninety-one, between the Penn- Plate Glass Company, of Irwin, Westmoreland county, State of Pennsylvania, a corporation duly created and existing under the laws of the State of Pennsylvania, party of the first part, and the Farmers' Loan and Trust Company, — corporation created by and existing under the laws of the State of New York, located in the city of New York, party *to* the second part, witnesseth:

That whereas, said party of the first part by its board of directors have deemed it advisible to increase its indebtedness by the issue of bonds to the amount of two hundred and fifty thousand dollars, to be used toward the payment of liabilities incurred in the erection of a plate-glass works, now being erected on land of the company as hereinafter set forth; and

Whereas, a majority of the stockholders of the said party of the first part have consented to such increase of indebtedness in the manner and form as provided by the statutes of the State of Pennsylvania; and

Whereas, the board of directors of said party of the first part at a regular session thereof by a resolution duly ordained and passed, authorized and directed the president and secretary of said company to prepare and execute a series of bonds and accompanying mortgage in conformity with the consent of the stockholders of said company, and at the time appointed a committee to superintend the issue of same and to decide on the form thereof and the trustee of said mortgage; and

Whereas, said committee have determined on the issue of a series of two hundred and fifty (250) bonds, of the denomination of one thousand dollars, each numbered from one to two hundred and fifty, consecutively, dated January first, 1891, signed by the president and authenticated by the secretary of said party of the first part, with the corporate seal attached thereto, and payable in gold coin of the United States of or equivalent to the present standard of weight and fineness at the office of the Farmers' Loan and Trust Company, said company having been duly selected to act as trustee, the party of the second part, in the city of New York, ten years after date, with the coupons or interest warrants thereto attached, representing the interest to accrue thereon at the rate of six per cent. per annum, payable semi-annually on the first days of July and January in each

year in gold coin at said office of the party of the second part in the city of New York, upon the presentation and surrender of the coupons representing the several installments of interest as they respectively mature and by reference to the terms of the mortgage, to limit the remedy of the holder in case of default in the payment of principal or interest to the subjection of the property and premises to be conveyed to the payment thereof; and

Whereas, the bonds so proposed to be issued by the party of the first part, the coupons or interest warrants accompanying the same and the trustee's certificate to be endorsed on said bonds, are substantially of the following form, that is to say:

No. —. *Form of Bond.* No. —.

UNITED STATES OF AMERICA, *State of Pennsylvania.*

Pennsylvania Plate Glass Company 6 Per Cent. First-mortgage Gold Bond.

$1,000.

Know all men by these presents, that the Pennsylvania Plate
106 Glass Company is indebted and hereby promises to pay to the Farmers' Loan and Trust Company, of the City of New York, or bearer, one thousand dollars in the gold coin of the United States of America, of or equivalent to the present standard of weight and fineness, at the office of said Farmers' Loan and Trust Company of New York City, on the first day of January, one thousand nine hundred and one, with interest from the first day of January, one thousand eight hundred and ninety-one, at the rate of six per centum per annum, payable semi-annually in like gold coin, at the office of said Farmers' Loan and Trust Company, in the city of New York, on the first days of July and January, in each year on the presentation and surrender of the annexed coupons as they severally mature.

In the case of default in the payment of the principal or any of the said interest in accordance with the tenor hereof, the said principal and interest may become collectible in the manner and with the effect specified and set forth in the deed of trust or mortgage hereinafter mentioned.

This bond is one of the series of two hundred and fifty bonds of like amount, tenor and date, amounting in the aggregate to the sum of two hundred and fifty thousand dollars, and numbered from one to two hundred and fifty consecutively, the payment of the whole series of bonds, with the interest thereof, being equally secured by a certain deed of trust or mortgage, bearing even date herewith, conveying the property and franchises of the company more particularly described therein, unto the Farmers' Loan and Trust Company to which reference is hereby made, for the terms and conditions upon which this bond is issued and for the rights and remedies of the holder hereof.

This bond shall not become obligatory until it shall have been